Calendar No. 678

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-476

FEDERAL FIREARMS OWNERS PROTECTION ACT

REPORT

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

TO ACCOMPANY

S. 1030

together with

SUPPLEMENTAL, 'ADDITIONAL, AND MINORITY VIEWS

JUNE 18 (legislative day, JUNE 8), 1982.—Ordered to be printed

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FEDERAL FIREARMS OWNERS PROTECTION ACT

JUNE 18 (legislative day, JUNE 8), 1982—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

together with

SUPPLEMENTAL, ADDITIONAL, AND MINORITY VIEWS

[To accompany S. 1030]

The Committee on the Judiciary, to which was referred the bill (S. 1030) to protect firearms owners' constitutional rights, civil liberties, and rights to privacy, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill as amended do pass.

I. PURPOSE

The purpose of the Committee bill is to assure that the rights of citizens to keep and bear arms under the second amendment to the United States Constitution; their rights to security against illegal and unreasonable searches and seizures under the fourth amendment; their protections against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and their rights against unconstitutional exercises of authority under the ninth and tenth amendments are not infringed under enforcement of existing firearm statutes. It is not the purpose of the Committee bill to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity. Further, the Committee does not want to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, which has been thwarted by

enforcement practices which are aimed at harassing, burdening, and harming those law-abiding citizens who choose to own and use firearms for legitimate purposes.

II. Committee Amendment

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

The Congress finds that the rights of citizens to keep and bear arms under the second amendment to the United States Constitution; their rights to security against illegal and unreasonable searches and seizures under the fourth amendment; their protections against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and their rights against unconstitutional exercise of authority under the ninth and tenth amendments; require additional legislation to correct existing firearms statutes and enforcement policies.

The Congress further finds that additional legislation is required to reaffirm its intent, as expressed in section 101 of the Gun Control Act, that "it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended, . . ." or "to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.".

TITLE I—AMENDMENTS TO TITLE 18, UNITED STATES CODE (18 U.S.C. 921–928)

AMENDMENTS TO SECTION 921

Sec. 101. (a) Subsection (a)(3) is amended by striking out "(D)" and inserting in lieu thereof "(E)" and by inserting "(D) any handgun;" after "silencer;"

(b) Subsection (a)(10) is amended by deleting the words "manufacture of" and inserting in lieu thereof the words "business of manufacturing".

(c) Subsection (a)(11)(A) is amended by deleting the words "or ammunition".

(d) Subsection (a)(12) is amended by deleting the words "or ammunition".

(e) Subsection (a)(13) is amended by deleting the words "or ammunition".

(f) A new subsection (a)(14) is inserted after subsection (a)(13), to read as follows; and the following subsections are renumbered accordingly:

"(14) The term 'engaged in the business' means:

"(A) As applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured.

"(B) As applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured.

"(C) As applied to a dealer in firearms, as defined in section 921(a)(11) (A) and (C), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. The term shall not include a person who makes occasional sales, exchanges, or purchases of firearms or who sells all or part of his personal collection of fireams.

"(D) As applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit. The term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms.

"(E) As applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported.

"(F) As applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with principal objective of livelihood and profit through the sale or distribution of the ammunition imported.".

(f) Subsection (a)(20) is amended to read as follows: "The term 'crime punishable by imprisonment for a term exceeding one year' shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less: *Provided, however*, That what constitutes a conviction shall be determined in accordance with the law of the jurisdiction in which the proceedings were held: *Provided further*, That any convictions which have been expunged, or set aside or for

which a person has been pardoned or has had his or her civil rights restored shall not be considered a conviction under the provisions of this Act, unless such pardon, expungement, or restoration of civil rights expressly provided that the person may not ship, transport, possess, or receive firearms.".

(g) A new subsection (a)(22) is inserted after subsection (a)(21) as follows: "(22) The term 'handgun' means a firearm originally designed to be used by the use of a single hand.".

AMENDMENTS TO SECTION 922

SEC. 102. (a) Subsection (a)(1) is amended to read as follows: "for any person (A) except a licensed importer, licensed manufacturer, or licensed dealer to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearms in interstate or foreign commerce; and (B) except a licensed importer or licensed manufactured to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce".

(b) Subsection (a)(2) is amended—

(1) by deleting the words "or ammunition"; and

(2) by deleting the words "and subsection (b)(3)".

(3) by deleting the words "or licensed dealer for the sole purpose of repaid or customizing," and inserting in lieu thereof the words, "licensed dealer, or licensed collector.".

(c) Subsection (a)(3) is amended to read as follows:

"(3) for any person to transport into or receive in the State where he resides any firearm purchased or otherwise acquired by such person outside that State, when such person knows or has reasonable cause to believe that the purchase or acquisition of such firearm would be in violation of any published ordinance or law of the State or locality where he resides or was in violation of any published ordinance or law of the State or locality where the purchase or acquisition occurred: Provided, That any transferee (other than a licensed manufacturer, importer, or dealer) shall meet in person with the transferor to accomplish the transfer unless prior thereto such person had met with the transferor in person to negotiate the sale or the transfer is otherwise permitted by the provisions of this chapter. This paragraph shall not preclude the subsequent transportation or shipment of a firearm by a nonlicensee in interstate or foreign commerce where the provisions of this paragraph are fully met.".

(d) Subsection (a)(5) is amended to read as follows:

"(5) for any person to transfer, sell, trade, give, transport, or deliver any firearm to any person who does not reside in the same State as the transferor when the trans-

feror knows or has reasonable cause to believe that the acquisition of such firearm by such person would be in violation of any published ordinance or law of the State or locality where the transferee resides or would be in violation of any published ordinance or law of the State or locality where such transfer occurs: Provided, That any licensed manufacturer, importer, or dealer shall be presumed, in the absence of evidence to the contrary, to have had actual knowledge of the published ordinances of such other State or locality, and that the transferor shall meet in person with any transferee (other than a licensed manufacturer, importer, or dealer) to accomplish the transfer unless prior thereto such person had met in person to negotiate the transfer, or the sale, transfer, or delivery is otherwise permitted by this chapter, or is in accordance with other provisions of this Act. This paragraph shall not preclude the subsequent transportation or shipment of a firearm by a nonlicensee in interstate commerce where the provisions of this paragraph are fully met, and shall not apply to the loan or rental of a firearm to any person for temporary use for lawful purposes; and".

(e) Subsection (b) is amended—

(1) by deleting paragraph (3) and redesignating paragraphs (4) and (5) as (3) and (4) respectively and deleting in new pargaraph (3) the word "and" following ";" and after new paragraph "(4)", insert "; and";

(2) by deleting in paragraphs (2) and newly designated (4) the words "or ammunition" wherever they appear.

(3) by (i) deleting the words "Paragraphs (1), (2), (3), and (4)" and inserting in lieu thereof the words "Paragraphs (1), (2), and (3),"; and (ii) deleting the words "Paragraph (4)" and inserting in lieu thereof the words "Paragraph (3)".

(4) by adding at the end thereof the following:

"(5) deliver any handgun to any person after negotiating for the sale of such handgun to that person, before the expiration of 14 days after the date the first payment for such handgun is received from the buyer of same, except that the delay period provided for herein shall not apply in any case where (A) the chief law enforcement officer of the purchaser's place of residence certifies, by notarized statement to the seller, that the immediate delivery of the handgun to the buyer is, to his knowledge, necessary to protect against a threat of immediate danger to the physical safety of the buyer, or (B) the purchaser provides proof that he has purchased another handgun within the previous twelve months and that in such purchase he complied with such 14 day waiting period."

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(f) Subsection (d) is amended—

(1) by deleting the words "licensed importer, licensed manufacture, licensed dealer, or licensed collector" the first time they appear and inserting in lieu thereof the words "any person";

(2) by deleting in paragraph (3) the word "or" following the semicolon;

(3) by replacing the period in paragraph (4) with a semicolon; and

(4) by inserting after the paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawfully in United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who, having been a citizen of the United States, has renounced his citizenship.".

(g) Subsection (g) is amended—

(1) by deleting the words "is under indictment for, or who" in paragraph (1);

(2) by deleting in paragraph (3) the word "or" following the semicolon;

(3) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawfully in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who, having been a citizen of the United States, has renounced his citizenship;"; and

(4) by deleting the words "to ship or transport any firearm or ammunition in interstate or foreign commerce" and inserting in lieu thereof the words "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.".

(h) Subsection (h) is amended—

(1) by inserting after the word "any" and before the word "person" the words "individual who to his knowledge and while being employed by any";

(2) by deleting the words "is under indictment for, or who" in paragraph (1);

(3) by deleting in paragraph (3) the word "or" following the semicolon;

(4) by inserting after paragraph (4) the following:

"(5) who, being an alien, is illegally or unlawfully in the United States;

"(6) who has been discharged from the Armed Forces under dishonorable conditions; or

"(7) who having been a citizen of the United States, has renounced his citizenship;"; and

(5) by deleting the words "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce" and inserting in lieu

thereof the words "in the course of such employment to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate of foreign commerce.".

(i) A new subsection (i) is inserted after subsection (h) to read as follows; and the following subsections are renumbered accordingly:

"(i) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.".

AMENDMENTS TO SECTION 923

SEC. 103. (a)(1) Subsection (a) is amended: (i) by deleting the words "No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from the Secretary." and inserting in lieu thereof the words "No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Secretary."; and (ii) by deleting the words "and contain such information", and inserting in lieu thereof the words "and contain only that information necessary to determine eligibility for licensing.".

(2) Subsection (a)(3)(B) is amended by deleting the words "or ammunition for firearms other than destructive devices;".

(b) Subsection (b) is amended by deleting the words "and contain such information", and deleting the words "The fee for such license shall by regulation prescribe".

(c) Subsection (c) is amended by adding the words: "*Provided, however,* That nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer: *Provided further,* That if any firearm is so disposed of by a licensee within one year of its transfer from his business inventory into his personal collection or if such disposition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of his business inventory.".

(d) Subsection (e) is amended by inserting before the word "violated" the word "willfully".

(e) Subsection (f) is amended—

(1) by inserting the words "de novo" before the word "judicial" in paragraph (3);

(2) by adding the words "whether or not such evidence was considered at the hearing held under paragraph (2)." after the words "to the proceeding" in paragraph (3); and

(3) by inserting at the end thereof the following new paragraph:

"(4) If criminal proceedings are instituted against a licensee alleging violations of this chapter or regulations promulgated thereunder, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government prior to trial upon such charges, the Secretary shall be absolutely barred from denying or revoking any license granted under the provisions of this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Secretary more than one year after the filing of the indictment or information.".

(f) Subsection (g) is amended to read as follows:

"(g)(1) Each licensed importer, licensed manufacturer, and licensed dealer, shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms at his place of business for such period, and in such form, as the Secretary may by regulations prescribe. The Secretary, when he has reasonable cause to believe a violation of this law has occurred, and that evidence thereof may be found on such premises may, upon demonstrating such cause before a Federal magistrate, and securing from him a warrant authorizing entry, enter during business hours the premises (including places of storage) of any firearms importer, manufacturer, or dealer, or any importer or manufacturer of ammunition, for the purposes of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, or dealer, under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, or dealer, at such premises. Moreover, the Secretary may inspect the inventory and records of a licensee without such cause, (A) for a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee; or (B) no more than once in any twelve consecutive months and upon a reasonable notice, but the Secretary shall bring no criminal charges against the licensee based upon such inspection or any recordkeeping errors found, other than for sales to a prohibited person: or (C) when such inspections or inquiries may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. Such procedure shall not be construed as authorizing the Secretary to seize any records or other documents other than those records or documents constituting

material evidence of a violation of law. If the Secretary seizes such records or documents, copies shall be provided the licensee within a reasonable time. The Secretary may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition and he may provide information to the extent such information may be contained in the records required to be maintained by the provisions of this chapter, when so requested by any Federal, State, or local law enforcement agency.

"(2) Each licensed collector shall maintain in a bound volume the nature of which the Secretary may by regulations prescribe, records of the receipt, sale, or other disposition, of firearms. Such records shall include the name and addresses of any person to whom the collector sells or otherwise disposes of a firearm."

(g) Subsection (j) is deleted.

AMENDMENTS TO SECTION 924

SEC. 104. (a) Subsection (a) is amended by inserting after the word "Whoever" the word "willfully".

(b) Subsection (c) is amended to read as follows:

"(c) Whoever (1) uses any firearm or destructive device against the person of another, to commit a felony for which he may be prosecuted in a court of the United States, or (2) carries a firearm or destructive device unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States, shall in addition to the punishment provided for the commission of such a felony, be sentenced to a term of imprisonment of not less than one year nor more than ten years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment of not less than five years nor more than twenty-five years. Notwithstanding any other provision of law, in the case of any conviction under subsection (c)(1), the court shall not suspend the sentence of such person or give him a probationary sentence, nor shall such person be paroled or furloughed before completing such minimum sentence, nor shall any term of imprisonment imposed under this subsection (c) run noncurrently with any term of imprisonment imposed for the commission of such other felony: *Provided*, That no person shall be sentenced under this subsection if he established to the satisfaction of the court that the use of the firearm or destructive device was to protect his person or the person of another from an honestly perceived immediate danger, or was honestly perceived in defense of his person, or the person of another or the property of either from conduct constituting a felony, or

was honestly effecting the arrest of a person in immediate flight from said felony.".

(c) Subsection (d) is amended to read as follows:

"(d) (1) Any firearm or ammunition involved in or used in any willful violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845 (a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, the seized firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

"(2) (A) In any action or proceeding for return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

"(C) only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States, shall be subject to seizure, forfeiture, and disposition.".

AMENDMENTS TO SECTION 925

SEC. 105. (a) Subection (c) is amended—

(1) by deleting the words "has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)" and inserting in lieu thereof the words "is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition";

(2) by inserting the word "transportation" after the word "shipment";

(3) by deleting the words "and incurred by reason of such conviction,";

(4) adding after the words "the public interest." the words "Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. In a proceeding conducted under this subsection, the scope of judicial review shall be governed by section 706 of title 5, United States Code. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice.".

(b) Subsection (d) is amended—

(1) by deleting the words "may authorize" and inserting in lieu thereof the words "shall authorize";

(2) by deleting the words "the person importing or bring-in the firearm or ammunition establishes to the satisfaction if the Secretary that";

(3) by deleting paragraph (3) the words "generally recognized as particularly"; and

(4) by deleting the words "may permit" and inserting in lieu thereof the words "shall permit".

AMENDMENTS TO SECTION 926

SEC. 106. Section 926 is amended by—

(a) redesignating existing section 926 as subsection (a);

(b) inserting the word "only" after the word "prescribe";

(c) deleting the words "as he deems reasonable" and inserting in lieu thereof the words "as are";

(d) deleting the words "The Secretary shall give reaable public notice, and afford interested parties opportunity for hearing, prior to prescribing such rules and regulations" and inserting in lieu thereof the words: "*Provided*, That no such rule or regulation promulgated after the effective date of this Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system or registration of firearms, firearms owners, or firearms transactions or dispositions be established".

(e) inserting a new subsection (b) as follows:

"(b) The Secretary shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, prior to prescribing such rules and regulations.".

(f) by inserting a new subsection (c) a follows:

"(c) The Secretary shall not prescribe regulations that require purchasers of black powder under the exemption pro-

vided in section 845(a)(5) of title 18, United States Code, to complete affidavits or forms attesting to that exemption.".

AMENDMENTS TO SECTION 927

SEC. 107. Section 927 is amended by adding the words: "*Provided, however*, That any provision of any legislation enacted, or of any rule or regulation promulgated, by any State or a political subdivision which prohibits or has the effect of prohibiting the transportation of a firearm or ammunition in interstate commerce through such State, when such firearm is unloaded and not readily accessible, shall be null and void".

SEC. 108. The amendments (including any repeals) made by this Act shall become effective one hundred and eighty days after the date of the enactment of this Act.

TITLE II—AMENDMENTS TO TITLE VII OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968 (18 U.S.C. APP. 1201–1203)

SEC. 201. Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (sections 1201, 1202, and 1203 of the appendix to title 18, United States Code) is hereby repealed.

III. PURPOSE OF COMMITTEE AMENDMENT

The amendments adopted by the Committee in lieu of S. 1030 as introduced were intended to reduce administrative burdens, clarify the requirements of the bill, and address concerns raised by some Senators to the bill as introduced.

S. 1030 as introduced would have defined as "importer," and thus subjected to requirements for an importer's license, anyone who brought in one or more firearms. The amended bill limits this to persons who import firearms as a regular business venture. This narrows the category of persons who must obtain the license, and permits ordinary, small scale importations by citizens returning to the United States.

The original language of S. 1030 provided that a person barred from gun ownership by a conviction would be relieved from that bar if he received a pardon or restoration of civil rights. The amended bill adds the exception that this will not apply if the pardon or restoration expressly provides that the recipient may not own firearms. This allows flexibility should such a pardon or restoration be based upon considerations not relating to fitness to own a firearm.

Existing law bans most firearm transfers between residents of different States. S. 1030 banned such transfers if they would violate the laws either of the State where they were made or the State of the buyer's residence. The amended bill makes two changes: (1) the transfer must be face-to-face; (2) a licensee is presumed to have actual knowledge of the published laws of each State. The first change rules out private "mail order" sales, the second minimizes the government's

initial burden of proving knowledge of State law where a sale in fact violated such law.

Existing law has been construed to bar licensees from owning private firearms collections; any transfers must be treated as business inventory. S. 1030 stated that nothing in the law would be construed to prohibit a licensee from maintaining a private collection, not part of his business inventory. It did not define the nature of the collection, nor make it clear that the exemption extended to acquisition and disposition as well as maintenance of the collection. The amended bill greatly clarifies this. It protects licensees who maintain or dispose of a private collection, provided that (1) no gun so disposed of, and which was transferred from the licenee's inventory, may be disposed within one year of the initial transfer unless fully recorded, and (2) no transfer may be made in order to evade the restrictions otherwise placed upon a licensee.

S. 1030 provided that a firearms license may not be revoked based on allegations of which the licensee has been acquitted in a criminal trial, or which have ended in any result other than his conviction. The amended bill allows the government to voluntarily drop criminal charges prior to trial and still proceed with revocation.

Similarly, S. 1030 barred forfeiture of seized firearms if the owner had been acquitted of charges, or if any finding other than guilty was entered, or if the enforcing agency failed to file such charges within 120 days. The amended bill allows the agency to bring a forfeiture action if it did not file charges at all or dropped them voluntarily before taking the defendant to trial. The forfeiture action must in any event be filed within 120 days.

Existing law broadly empowers agents to search licensee premises during business hours without warrant or cause. S. 1030 provided that probable cause relating to a violation of a gun law must exist. The amended bill makes several changes: (1) "reasonable" rather than "probable" cause is required, lowering the standard but only slightly; (2) an administrative warrant is required, giving procedural safeguards and creating a record of use; (3) certain limited exceptions are recognized where such cause is not needed—mainly for firearm tracing and for an annual courtesy inspection and instruction. These expressly allow tracing and instruction without permitting harassment.

Existing law provides an additional sentence (must be served consecutively) but not a mandatory sentence (no probation or parole) for use of a gun, or carrying of it, during a federal felony. The additional sentence becomes mandatory only upon second conviction under this section—which has never occurred. S. 1030 originally provided a mandatory but not additional sentence for use of a firearm in a federal felony. Exceptions were provided for self defense. This was criticized since (1) the sentence was not additional and (2) carrying during the felony, absent actual use, was not an occasion for special penalties. Amended S. 1030 meets both these criticisms. The sentence for use in a felony is made both additional and mandatory—it cannot be served concurrently with any term for the underlying felony, and probation and parole are banned. The imposition of an additional sentence for carrying during a felony is retained—thus keeping current additional sanctions against carrying during the felony. The Committee also

expanded the minimum sentence from one year to two for a first offense.

Existing law allows one convicted of a felony to apply for a relief from disability which, if granted based on his record and reputation, restores the right to own firearms. The existing relief provisions had several anomalies: they applied only to convicts, excluding those barred from gun ownership for other reasons (prior mental disorder, etc.); they could not be invoked by one convicted of even the most technical violation of the gun law itself; the provisions were vague, with burden on the applicant to satisfy them; and there was no provision for judicial review. S. 1030 would have applied relief provisions to everyone barred from gun ownership, would have made provisions for *de novo* review of denials, and would have put the burden on the issuing authority to establish such that it should not be granted. The amended bill retains the broadening of applicability, but permits the burden to revert to the applicant as under current law. Review is retained, but under standards of the Administrative Procedure Act. This retains the most vital reforms while eliminating those which encountered the most controversy.

S. 1030 contained provisions for a one-house veto of administrative regulations. The amended bill eliminates these.

The Committee amendments also impose a fourteen-day waiting period before a handgun which is purchased from a dealer, may be delivered. This is intended both as a "cooling off" period and to allow background checks by local police.

IV. Hearings and Need for Legislation

The mandate for the addition of civil liberty guarantees to the Gun Control Act of 1968 was documented initially in oversight hearings on the Bureau of Alcohol, Tobacco and Firearms, held by the Senate Committee on Appropriations in July 1979, and in April, 1980. During those hearings, the Committee received testimony from a number of firearm owners and collectors who had been prosecuted for technical and unintentional violations of federal law. Several had, in addition, experienced confiscation of entire collections or inventories based upon allegations of isolated non-willful violations, and subsequently had been required to litigate in the courts in order to secure the return of firearms, or to oppose revocation of licenses, despite acquittal on all charges during previous criminal trials.

The Committee further heard testimony from a former Treasury official who estimated that 75 percent of firearms cases had been brought against individuals whose violations, if any, were unintentional. Written statements were also received from two members of the state judiciary, who commented that agents enforcing the firearms laws had repeatedly refused to bring cases against convicted felons in illegal possession of sawed-off shotguns and other prohibited weapons. The need for a redirection of enforcement efforts away from legitimate firearm owners and toward serious, intentional criminals was apparent.

Senator Dennis DeConcini, who chaired the hearings in the Appropriations Committee concluded:

> Frankly, I was shocked by yesterday's testimony. The problem appears much greater in scope and more acute in intensity than I had imagined. It is a sobering experience to listen to average, law-abiding citizens present evidence of conduct by an official law enforcement agency of the federal government which borders on the criminal. . . . The testimony offered yesterday, together with supporting documentary data, is extremely disquieting. . . . (It) indicates that BATF has moved against honest citizens and criminals with equal vigor. . . . The time has come to make some revisions in the Gun Control Act of 1968.

The Subcommittee on the Constitution of the Senate Committee on the Judiciary held additional hearings on Gun Control and Constitutional Rights in September, 1980. The Subcommittee heard from both the Treasury Department and the National Rifle Association, and also from three firearm collectors who had experienced confiscations of their entire collections for alleged violations. In two cases, charges were dropped, and in the remaining one, no charges were ever brought. The firearms taken in the last case—described as valuable collector items, engraved and inlaid with precious metals—were still being withheld, nearly three years after their taking. Additional documentary evidence was obtained from thirty-one of the dealers and collectors. The Subcommittee's subsequent report, "The Right to Keep and Bear Arms," concluded:

> Based upon these hearings, it is apparent that the enforcement tactics made possible by current firearms laws are constitutionally, legally, and practically reprehensible. Although Congress adopted the Gun Control Act with the primary object of limiting access of felons and other high-risk groups to firearms, the overbreadth of the law has led to neglect of precisely this area of enforcement. . . . The Bureau's own figures demonstrate that in recent years the percentage of its arrests devoted to felons in possession and persons knowingly selling to them have dropped from 14 percent down to 10 percent of their firearms cases (and that) 55 percent of its gun law prosecutions overall involve persons with no record of a felony conviction, and that a third involve citizens with no police record whatsoever. . . .
>
> The Subcommittee received evidence that BATF has primarily devoted its firearms enforcement efforts to the apprehension, upon technical *malum prohibitum* charges, of individuals who lack all criminal intent and knowledge. . . . Since existing law permits a felony conviction upon these charges even where the individual has no criminal intent or knowledge, numerous collectors have been ruined by a felony record carrying a potential sentence of five years in a federal prison. Even in cases where the collectors secured acquittal, or grand juries failed to indict, or prosecutors refused to file criminal charges, agents of the Bureau have gen-

> erally confiscated the entire collection of the potential defendant upon the ground that he intended to use in violation of the law. In several cases, the agents have refused to return the collection even after acquittal by jury. The defendant under existing law is not entitled to an award of attorney's fees; therefore, should he secure return of his collection, an individual who has spent thousands of dollars establishing his innocence of the criminal charge is required to spend thousands more to civilly prove his innocence of the same charges, without hope of securing any redress. . . .
>
> In light of this evidence, reform of federal firearm laws is necessary to protect the most vital rights of American citizens. Such legislation is embodied in S. 1030.—The Right to Keep and Bear Arms (Committee Print), Report of the Subcommittee on the Constitution, February 1982, pp. 20–21.

The full Judiciary Committee held three additional days of hearings on S. 1030, on December 9 and 11, 1981, and February 8, 1982. The sponsor of S. 1030, Senator James McClure, and the sponsor of H.R. 3300, its House counterpart, Representative Harold Volkmer, testified that its purpose was to accomplish "a redirection of the Act and a redirection of enforcement. The redirection is aimed at those who traffic in illegal guns and to go after the criminal who uses the gun. We feel that society would be better served by reducing the number of crimes, by reducing the illegal use and illegal trafficking of guns, than by going after those who never use a gun in the commission of a crime, who only use a gun for legitimate purposes."

The Committee also heard the testimony of three firearm collectors and two firearm dealers who had suffered prosecution and confiscation of firearms based upon unintentional violations.

One particularly significant case was that of Richard Boulin, a Vietnam veteran and former police officer. Boulin was arrested and convicted for having sold, while a licensed dealer, firearms from a personal collection kept at his home. He had previously been advised by two agents that such sales would be legal, since the dealer's restrictions on place of sale and recordation applied only to his dealership inventory. Subsequent to his conviction—in the course of which the judge commented favorably on his character, but noted that intent is not an element of a Gun Control Act violation—Boulin discovered that the director of the Bureau had stated in writing that such conduct was completely lawful. Boulin summed up the effect:

> What has this done to me personally? It has destroyed me, to a degree. Of course, I have lost my family. I lost $40,000 in firearms. . . . they took an everyday, ordinary person who had never been arrested for anything, who did not even have a traffic ticket against him, and made him into a felon. I cannot get a mortgage today. I find it hard to hold a job today because of the type of jobs that I work. It has made my life generally miserable. I lost a lot of friends. . . .
>
> To cast one experience: I went into a restaurant in Rockville with my wife a year or so after I was arrested. There were a couple of policemen in uniform, sitting there, that I knew. I said "how are you doing?" They said, "we don't talk

to criminals. Get out of here," in front of my wife. You can imaginne—I don't know if you can really imagine—what it feels like.

In addition to the firearm collectors and dealers testifying, the Committee heard from critics of S. 1030, including Handgun Control, Inc., the U.S. Conference of Mayors, the New York City Bar Association, and the National Coalition to Ban Handguns. Testifying in support of the bill was the National Rifle Association, the National Sheriffs' Association, and the Citizen's Committee for the Right to Keep and Bear Arms. A written statement by the Fraternal Order of Police was also received, in which FOP stated that it "strongly support S. 1030," which it "considers to be a vast improvement over the Gun Control Act as it now exists. It clarifies, tightens, and makes rational the all too often vague and inconsistent provisions of that Act."

Subsequent to these hearings, Senator Orrin Hatch, chairman of the Subcommittee on the Constitution, introduced in Committee an amended form of S. 1030. This bill contained a number of changes negotiated between Senator McClure and representatives of the Treasury Department, and was intended to remove deficiencies which had become apparent since the original drafting of S. 1030, and delete provisions subject to controversy which may have impeded prompt action on the legislation. The amended bill contained additional guarantees against improper mail order sales, against abuse of interstate sales and provisions allowing dealers to keep private firearm collections, created procedures for administrative warrants for inspection and new, less burdensome, and procedures for appealing denials of a relief from disability to own firearms.

V. Section-by-Section Analysis

Section 101. Section 101 incorporates three changes from existing law. Subsections (c), (d), and (e) eliminate the requirement that individuals who distribute only ammunition, but not firearms, obtain federal firearm licenses. Regulation of ammunition-only licensees, many of whom are convenience markets or rural general stores, has proven burdensome and of no utility in crime control.

Subsection (f) for the first time defines "engaged in the business" in the context of firearm manufacture, importation, and dealing, and of ammunition manufacture. Existing law requires that those engaged in these businesses obtain a federal license. Many firearm hobbyists sell or trade firearms from their collections, and hearings have repeatedly established that many such hobbyists had been charged and convicted for technically violating the broad reading which courts had given this section.

Lower courts have applied two different but similar tests for engaging in the business. Neither is especially clear, and both can be applied to a hobbyist to whom profit is a secondary objective. Under one test, anyone who "is engaged in any business of selling firearms, which occupies time, attention and labor for the purpose of livelihood or profit" has engaged in the business; under the other anyone who "has guns on hand" or can obtain them and is willing to sell has so engaged. Compare *United States* v. *Williams*, 502 F.2d 581 (8th Cir. 1974) with *United States* v. *Swinton*, 521 F.2d 1255 (10th Cir. 1975). S. 1030 would sub-

stantially narrow these broad parameters by requiring that the person undertake such activities as part of a regular course of trade or business and for the principal objective of livelihood or profit. It expressly provides that these requirements do not extend to hobbyists who are involved with their personal collection nor to those who occasionally do gunsmithing work.

This provision would not remove the necessity for licensing from part-time businesses, or individuals whose principal income comes from sources other than firearms but whose main objective with regard to firearm transfers is profit rather than hobby. A sporting goods store or pawn shop which derived only a part of its income from firearm sales, but handled such sales for the principal objective of business and profit, would still require a license.

A third change relates to the definition of "crime punishable by imprisonment for a term exceeding one year," a conviction for which bars a citizen from possessing firearms. S. 1030 works two changes to this subsection. The first is a recognition that what constitutes a conviction shall be determined in accord with the law of the jurisdiction where the underlying proceeding were held. This is intended to accommodate state reforms adopted since 1968, which permit dismissal of charges after a plea and successful completion of a probationary period, or which create "open-ended" offenses, a conviction for which may be treated as misdemeanor or felony at the option of the court. Since the federal prohibition is keyed to the state's conviction, state law should govern in these matters. In the case of "open ended" offenses which are classed as felonies but may be reduced by the trial court, it is intended that these constitute a "crime punishable by imprisonment for a term exceeding one year" unless and until the court enters a decision to treat the offense as a misdemeanor.

S. 1030 would also exclude from such convictions any for which the person has received a pardon, civil rights restoration, or expungement of the record. Existing law incorporates a similar provision as to pardons in 18 U.S.C. section 1202, relating to possession of firearms, but through oversight does not include such provision in 18 U.S.C. section 922, dealing with their purchase or receipt. This oversight has resulted in a ruling that a state pardon does not permit a pardoned citizen to receive or purchase a firearm, despite the express provision that he may possess it. *Thrall* v. *Wolfe*, 503 F.2d 318 (7th Cir. 1974). This change would remove that anomaly. In the event that the official granting the pardon, restoration of rights or expungement of record does not desire it to restore the right to firearm ownership, this provision is rendered inapplicable where the order or pardon expressly provides that the person may not possess firearms.

A new subsection (a)(22) is added that provides a definition of the term "handgun": The original 1968 Gun Control Act did not contain such a definition. The Committee, in adopting several amendments affecting only handguns, felt it was necessary to include a general definition of a handgun.

Section 102. Section 102 of S. 1030 amends 18 U.S.C. section 922, which generally describes prohibited acts under the Gun Control Act. Section 102 effects two major changes in the list of proscribed acts.

The first change relates to transfers of firearms between residents of different states. Existing 18 U.S.C. section 922(a)(3), (5) 2nd 922

(6)(3) generally prohibit transfers of firearms between residents of different states, except where the recipient is a federal firearms licensee, or the transfer meets other narrow criteria. This was intended to prevent the use of interstate sales to defeat local gun restrictions, but in fact bars almost all interstate transfers, even where no law would be violated. Section 102 amends this bar to permit interstate transfers so long as they violate neither firearm laws of the place of sale nor those of the purchaser's residence, and so long as purchaser and seller met in person during the negotiation or transfer. The latter provision is intended to exclude "mail order" sales, where order and delivery are made by mail or wire. Necessarily, restrictions which are meant to have no extraterritorial application are not violated by transactions outside the locality. A law restricting modes of conducting business within a locality, and applicable only to sales within the locality and not to purchases made by its residents elsewhere, is not violated by a resident's purchase of a firearm outside its boundaries. Conversely, a waiting period on delivery of a firearm to a resident, wherever bought in the state, and permit systems relating to ownership or possession of a firearm, wherever bought, are intended to have application outside a locality's boundaries and must be complied with.

The Committee amendments add a provision that a licensed dealer is presumed, in absence of evidence to the contrary, to have knowledge of the published ordinances of other jurisdictions to whose residents he transfers firearms. This was added to meet arguments that a dealer could otherwise make improper transfers so long as he did not acknowledge such laws. The amendment is intended to reverse the initial burden of proof on the issue of knowledge, and not to create an evidentiary presumption.

A second major change incorporated in section 102 creates a coordinated and consistent definition of persons prohibited from possessing, transporting, and receiving firearms. Existing law is deficient in that 18 U.S.C. section 922 defines four classes of persons forbidden firearms receipt, while section 1202 defines six classes—only two of which resemble section 922's categories—of persons forbidden firearm possession and transportation. Thus, for instance, fugitives from justice and users of certain drugs are forbidden firearms receipt but not firearm possession; illegal aliens are forbidden firearm possession, yet not forbidden to receive firearms. Moreover, the prohibition on transfers of firearms to these classes applies only to licensed dealers, and not to other citizens.

S. 1030 replaces these inconsistent rules with a straightforward and consistent one. Section 102(f)(1) makes the ban on transfers to prohibited persons applicable to "any person", rather than federal licensees alone. The remainder of sections 102 (f) and (g) amend 18 U.S.C. section 922 to prohibit firearm possession, receipt or transportation by convicted felons, fugitives from justice, users of certain drugs, persons subject to an adjudication as a mental defective or a commitment order, illegal aliens, those who have received a dishonorable discharge, and those who have renounced their citizenship. Section 102(h) imposes a prohibition on carrying of firearms while in the employment of any prohibited person, and 102(i) carries over

the current ban on firearm receipt by one under indictment for a felony.

A new subsection is added to Section 922 that provides for a 14-day waiting period prior to the delivery of a handgun after its purchase. There are two exceptions to this requirement: (1) where the physical danger of an individual may be involved, or (2) where the 14-day waiting period requirement had been complied with during the previous 12 month period.

Section 103.—Section 103 of S. 1030 amends 18 U.S.C. section 923, which relates to issuance of federal firearms licenses and duties of licensees. Section 103 effects five significant changes in the law.

First, subsection (c) authorizes licensees to maintain private firearms collections independent of their business operations. Existing requirements that licensees maintain inventory and disposition records on the business premises, and record on firearms sold, have led to a construction that all sales by a licensee, even of firearms from his own collection, kept at his home, and never part of the business inventory, must be recorded. *See United States* v. *Scherer*, 523 F. 2d 371 (7th Cir. 1975). The Committee heard testimony from one licensee who was told on the one hand by federal agents that sale from his personal collection need not be recorded, and on the other hand arrested, charged and convicted for failure to record such sales. The Committee further received evidence that the enforcing agency had itself vacillated on the question of whether and how such sales must be recorded. The need for a concise, clear standard is evident.

Section 103(c) of S. 1030 as reported out sets such a standard. This subsection permits a licensee to maintain and dispose of a private firearms collection on equal terms with a private, nonlicensed person. S. 1030 as reported also incorporates two restrictions on this right. First, should the licensee transfer firearms from his inventory into his collection, they are deemed to remain part of the inventory for one year after the transfer, and are subject to all recording requirements if sold during that period. The licensee would be required to re-transfer any such firearms into his inventory, then transfer them at his premises with appropriate recording. A second restriction would deem the firearms part of the licensee's business inventory if he made the transfers with the intent of willfully evading his duties as a licensee—with primary intent to make improper transfers later, rather than to promote his collection. These limitations were added to meet objections that S. 1030, as originally introduced, might allow a licensee to transfer firearms into his personal collection in order to evade his duties as a licensee.

S. 1030, section 103(e) amends 18 U.S.C. 923(f), which sets out license revocation procedures. First, 103(e) expressly provides that the hearing on appeal in federal district court shall be "*de novo.*" Some courts have construed existing provisions to authorize avoiding a formal fact-finding hearing unless "substantial doubt" as to the factual findings is apparent. *See Perri* v. *Department of Treasury*, 637 Fed. 180 F. 2d 180 (9th Cir. 1981). This amendment is intended to render such interpretations inapplicable to 18 U.S.C. 923(f).

A second change is found in section 103(e), which bars license revocation based on charges of which the licensee has been vindicated in a criminal action. The purpose is to eliminate the practice, docu-

mented in hearings before the Committee, of prosecuting a licensee, then following with revocation proceedings should he be found innocent or charges be dismissed. The effect in these cases was to burden a licensee with additional costs of legal defense despite his initial vindication. To ensure that the prosecuting agency has leeway to drop criminal charges and proceed with revocation should its evidence prove too weak for the former but sufficient for the latter, the government is permitted to voluntarily terminate criminal proceedings prior to trial and still proceed administratively. This section is not meant to preclude license revocation or denial where the acquittal relates to different transactions or activities than are involved in the license revocation proceedings.

18 U.S.C. 923(g), relating to recordkeeping and administrative searches of licensee premises, is amended by section 103(g) to grant licensees protection against warrantless or unreasonable searches and seizures. 103(g)(1) permits enforcing agents to enter a licensee's premises during business hours to examine his records and inventory. This power is subject to two limitations. First, there must be reasonable cause, not necessarily probable cause, to believe a violation of law has occurred and that evidence of the violation may be found. Second, this cause must be demonstrated before a federal magistrate and a warrant obtained. The warrant requirement serves to protect against unreasonable exercises of power, to limit the scope of the intrusion, and the record created by the application and affidavit will provide a record to judge the propriety of such actions.

103(g)(2) creates an exception to the requirement of establishing reasonable cause where any of three circumstances exist. An exception is granted, first, where the intrusion is a reasonable inquiry as part of a criminal investigation of persons other than the dealer himself. Such inquiries may occur before there is reasonable cause to believe that any particular person committed a violation, and to require proof of such violation might unduly hinder law enforcement. Second, an exception is granted for what have become known as "courtesy inspections," the purpose of which is not investigation but assistance to the licensee by pointing out minor recordkeeping errors. These may be made up to once a year, upon reasonable notice, and shall not be the basis of a prosecution except for sales to illicit purchasers. Finally, an exception is granted for inquiries directed at determining the disposition of a particular firearm or firearms. Whatever the basis of the inspection or investigation, the enforcing agency is authorized to physically seize only records which are material to a violation of law, and copies of these are to be provided within a reasonable time.

These sections of S. 1030 represent significant changes from the bill as originally introduced. They were made to meet objections that section 103 might be read to unduly limit license revocation following pretrial dismissal or plea bargaining, or interfere with needs for firearm tracing and criminal investigation. The Committee feels that the changes made with regard to this section will clarify its terms, avoid the possibility that this section will be construed to bar reasonable inquiries, and still grant to licensees remedial action in protection of the rights they, like all Americans, have under the fourth amendment.

In addition to these changes, section 103 also codifies certain standards which mark no change from current practice. 103(d) provides

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that, to support a license revocation, a violation of law must be willful. Since the existing Gun Control Act requires license issuance and renewal unless, inter alia, the licensee has "willful violated any of the provisions of this chapter," 18 U.S.C. 923(d)(1)(C), courts have universally held that willfulness must be shown to revoke a firearms license under existing law. *See Shyda* v. *Director, B.A.T.F.*, 448 F. Supp. 409 (M.D. Pa. 1977); *Mayesh* v. *Schultz*, 58 F.R.D. 537 (S.D. Ill. 1973); *Rich* v. *United States*, 383 F. Supp. 797 (S.D. Ohio, 1974). Section 103(d) is accordingly a codification of current practices and not a change in law.

Section 104. Section 104 of S. 1030 effects several important changes to 18 U.S.C. 924, the general penalty and forfeiture section of the Gun Control Act.

First, 103(a) inserts the word "willfully" into the general penalty clause contained in 18 U.S.C. 924(a). The purpose is to require that penalties be imposed only for willful violations—those intentionally undertaken in violation of a known legal duty. *United States* v. *Bishop*, 412 U.S. 346 (1973); *Pomponio* v. *United States*, 429 U.S. 10 (1976). Existing law for the most part requires at best a general intent, so that even inadvertent violations, and those made in the best of faith, may be the subject of prosecution. Improper prosecutions under such conditions—even, in one case, for acts which the director of the enforcing agency had stated were completely legal—were documented in hearings before the Committee, and in earlier hearings before its Subcommittee on the Constitution and the Senate Committee on Appropriations. This subsection is designed to guarantee against such practices. It is moreover designed to provide enforcing agents, prosecutors and courts with a clear delineation of the type of offenders against whom the law is directed. It removes the tendency of statutes permitting conviction for inadvertent violations to "ease the prosecutor's path to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries." *Morisette* v. *United States*, 342 U.S. 246, 263 (1952)

Second, section 104(b) amends 18 U.S.C. 924(c), which establishes additional penalties for use or carrying of a firearm during certain federal offenses. These changes are intended to significantly increase the penalties for criminal use of firearms. Existing law imposes additional penalties for criminal use of firearms. Existing law imposes additional penalties for such use, but does not rule out probation except upon a second conviction, and fails to rule out parole or furlough releases even for these repeat offenders. As reported out by the Committee, S. 1030 retains the additional penalty for unlawful carrying of a firearm during a federal felony. For actual use in a federal felony committed against the person of another, the sentence is additional and release on probation, parole, work furlough or any other form of prison release is forbidden. "Use", in this sense, should be construed to include any employment as a tool to advance the underlying crime, whether by threat, physical striking or discharge. The existing additional sentence for "use" has been held to apply where the offender was captured, with firearm still concealed, outside an institution he intended to rob, and it is intended that this application be continued under section 104(b). *United States* v. *Moore*, 580 F. 2d 360 (9th Cir.). It is also intended that the penalties for "use" be applicable to all violent and threatening use in crimes, including those crimes of which

being armed is an element, such as armed robbery of a federal or federally insured institution, to the maximum extent possible under the Double Jeopardy clause of the fifth amendment, notwithstanding decisions such as *Simpson* v. *United States*, 435 U.S. 6 (1978).

Section 104(b) of S. 1030 incorporates several changes from S. 1030 as originally drafted, intended to meet criticisms of the original bill. It had been argued that S. 1030 would have weakened existing law since it eliminated the existing additional sentence for unlawful carrying, as distinct from use, during a federal felony, and that S. 1030's sentence was mandatory but not additional to the underlying sentence. S. 1030 meets these criticisms by reinserting the penalty for unlawful carrying during a federal felony and by providing that the penalty for use be both mandatory and additional to any other sentence. Committee amendments moreover double the minimum sentence to two years on first offense. Accordingly, these criticisms are inapplicable to S. 1030 as reported out by the Committee.

A third major change is accomplished by section 104(c), which amends 18 U.S.C. 924(d), governing forfeiture of firearms involved in a violation of federal law. The Committee during its hearings received considerable evidence of misuse of existing overly general powers to confiscate and forfeit firearms. In cases where a collector or dealer was alleged to have sold a small number of firearms improperly—often without illicit intent—enforcing agents confiscated entire collections or inventories on occasion such collections were withheld despite the owner's acquittal of all charges, or, in the total absence of criminal charges, for over two years after the seizure. Owners who secured the return of such firearms often did so only at considerable legal expense to themselves. Section 104(c) addresses these problems at several levels.

First, it limits forfeitures to firearms used or involved in a willful violation. The "intended to be used" basis for forfeiture is removed to prevent improper seizure of an entire collection or inventory based on the most vague evidence of intent.

Second, section 104(c) institutes several procedural safeguards against improper seizure or undue retention of seized property. Upon acquittal of the owner or dismissal of charges against him, seized firearms shall be returned unless the return would place the owner in violation of law. In any event, an action for forfeiture must be commenced, if at all, within 120 days of seizure. Beyond this point, the statutory power to forfeit is lost. Finally, only those firearms particularly and individually identified as used, involved in or intended to be used may be seized or forfeited. This is intended both to prevent the issuance of general warrants, leaving it to the executing agents to decide which firearms meet general criteria of use or involvement, and also to prevent wholesale forfeiture of collections or inventories upon a claim of general intent to so use. These are protections recognized for all citizens by the fourth amendment; they are measures which the judiciary has begun to accept as necessary; they are appropriate for recognition by our constitutional system. *See generally United States* v. *1,992 Assorted Firearms, supra; United States* v. *One Assortment of 89 Firearms*, — F.2d — (4th Cir., Jan. 26, 1982).

Finally, section 104(c) provides, as an enforcement measure, the requirement that attorney's fees be awarded a successful claimant to the

firearms. If an individual has in fact been deprived of his property unjustly, and establishes such in court, these is little reason to put the burden of costs upon the just claimant rather than those who have unjustly taken his possessions. Such an award is likewise to be made in any other action, civil or criminal, under this chapter, where the court finds it was undertaken without foundation or from specified bad motives.

Section 105. Section 105 of S. 1030 amends 18 U.S.C. section 925, which prescribes certain administrative procedures peculiar to the Gun Control Act. 18 U.S.C. section 925(c) presently empowers the Secretary of the Treasury to grant, upon proper application and investigation, a relief from the disability to purchase or possess firearms incurred by persons convicted of a felony. This relief is to be granted if the applicant demonstrates that the conviction and his record and reputation indicate he is unlikely to act in a manner that would endanger the public safety. This is intended to provide a "safety valve" whereby persons whose offenses were technical and nonviolent, or who have subsequently demonstrated their trustworthiness, may obtain relief.

Present law restricts relief to a relatively narrow category of persons convicted of felonies (thus excluding other prohibited classes, which may in fact be more trustworthy) other than violations of the Gun Control Act (thus excluding those convicted of technical and unintentional violations). Section 105(a) amends this to make any person prohibited from firearm possession, receipt or transportation eligible to apply. In light of evidence before the Committee that Gun Control Act charges have been abused in the past with resultant convictions of persons not inclined to any criminal activity, making liberal relief available to such persons is essential. Section 105(a) moreover establishes the right of appeal to the district court from any denial of such relief, and further empowers the court to consider additional evidence in making its finding where a failure to do so might yield a miscarriage of justice. In such a case, the court might in its discretion request the presence of an agent representing the Secretary, and stay the action for a suitable time to permit the Secretary to review his findings in light of the additional evidence, then proceed forward in the event the evidence does not alter his determination.

Section 105(b) amends 18 U.S.C. section 925(d), governing importation of firearms. Under 925(d), the Secretary may authorize such importation of firearms which are, inter alia, generally recognized as particularly suitable for sporting purposes. 105(d) amends this to require authorization in the event the firearm is shown to be suitable for sporting purposes. It is anticipated that in the vast majority of cases this will not result in any change in current practices.

Section 106. Section 106 of S. 1030 amends 18 U.S.C. section 926, which deals with promulgation of rules and regulations. 106(a) redesignates existing section 926 as subsection (a) of that section. 106 (b) and (c) provide that the Secretary shall promulgate only such regulations as are necessary to carry out the provisions of the Gun Control Act. It also specifically forbids the promulgation of any rules, after the effective date of the act, which would centralize or record records maintained under the act at any government-owned or government-controlled facility, or that would establish any system of firearm, firearm owner, or firearm transaction registration. Procedures

established prior to the act's effective date are excepted in order that 106(d) not be taken to preclude existing procedures for storage of records of out-of-business dealers, nor existing procedures for consulting such records to trace firearms used in crime, nor existing requirements for reporting of multiple handgun transfers. It is not intended that this exemption from section 106(d)'s ban be taken as indicating approval of the asserted need for such procedures nor their appropriateness under other requirements of law.

Section 106(e) creates a new 18 U.S.C. section 926(b), requiring ninety days' notice of any new regulations, and 106(f) creates a new 18 U.S.C. section 926(c), ruling out requirement of affidavits for black powder transactions permitted under other provisions of law.

Section 107. Section 107 amends 18 U.S.C. section 927 to add a provision nullifying state and local laws which have the effect of prohibiting transportation of a firearm through such state when the firearm is unloaded and not readily accessible. This is intended to prevent such local laws, which may ban or restrict firearm ownership, possession or transportation, from being used to harrass interstate commerce and travellers. It is anticipated that the firearms being transported will be made inaccessible in a way consistent with the mode of transportation —in trunk or locked glove compartment in vehicles which have such containers, or in a case or similar container in vehicles which do not.

Section 108. Section 108 sets the effective date of this act as 180 days after its enactment.

Section 201. Section 201 repeals 18 U.S.C. sections 1201–03, the provisions of which have been incorporated into the Gun Control Act proper by the provisions of this act.

VI. Changes in Existing Law

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill S. 1030, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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CHAPTER 44—FIREARMS

Sec.
921. Definitions.
922. Unlawful acts.
923. Licensing.
924. Penalties.
925. Exceptions: Relief from disabilities.
926. Rules and regulations.
927. Effect on State law.
928. Separability clause.

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§ 921. Definitions

(a) As used in this chapter—

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(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of

any such weapon; (C) any firearm muffler or firearm silencer; (*D*) *any handgun;* [(D)] (*E*) any destructive device. Such term does not include an antique firearm.

* * * * * * *

(10) The term "manufacturer" means any person engaged in the [manufacture of] *business of manufacturing* firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means (A) any person engaged in the business of selling firearms [or ammunition] at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm [or ammunition] as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms [or ammunition] as curios or relics, as the Secretary shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "engaged in the business" means:

(A) As applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured.

(B) As applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured.

(C) As applied to a dealer in firearms, as defined in section 921(a)(11) (A) and (C), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. The term shall not include a person who makes occasional sales, exchanges, or purchases of firearms or who sells all or part of his personal collection of firearms.

(D) As applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit. The term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms.

(E) As applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of liveli-

hood and profit through the sale or distribution of the firearms imported.

(F) As applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

[(14)] *(15)* The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

[(15)] *(16)* The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

[(16)] *(17)* The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition systems) manufactured in or before 1983; and

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

[(17)] *(18)* The term "ammunition" means ammunition or cartridge cases, primer, bullets, or propellent powder designed for use in any firearm.

[(18)] *(19)* The term "Secretary" or "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

[(19)] *(20)* The term "published ordinance" means a published law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

[(20)] *(21)* [The term "crime punishable by imprisonment for a term exceeding one year" shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.] *The term "crime punishable by imprisonment for a term exceeding one year" shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less: Provided, however, That what constitutes a conviction shall be determined in accordance with the law of the jurisdiction in which the proceedings were held: Provided further, That any convictions which have been*

expunged, or set aside or for which a person has been pardoned or has had his or her civil rights restored shall not be considered a conviction under the provisions of this Act, unless such pardon, expungement, or restoration of civil rights expressly provided that the person may not ship, transport, possess, or receive firearms.

(22) The term "handgun" means a firearm originally designed to be used by the use of a single hand."

* * * * * * *

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) [for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce] *for any person (A) except a licensed importer, licensed manufacturer, or licensed dealer to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; and (B) except a licensed importer or licensed manufacturer to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or service any ammunition in interstate or foreign commerce*;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm [or ammunition] to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph [and subsection (b)(3)] shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, [licensed dealer for the sole purpose of repair or customizing] *licensed dealer, or licensed collector*;

* * * * * * *

[(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or interstate succession, in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a rifle or shotgun obtained in conformity with the provisions of subsection (b)(3) of this section, and (C) shall not

apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter] *(3) for any person to transport into or receive in the State where he resides any firearm purchased or otherwise acquired by such person outside that State, when such person knows or has reasonable cause to believe that the purchase or acquisition of such firearm would be in violation of any published ordinance or law of the State or locality where he resides or was in violation of any published ordinance or law of the State or locality where the purchase or acquisition occurred: Provided, That any transferee (other than a licensed manufacturer, importer, or dealer) shall meet in person with the transferor to accomplish the transfer unless prior thereto such person had met with the transferor in person to negotiate the sale or the transfer is otherwise permitted by the provisions of this chapter. This paragraph shall not preclude by a nonlicensee in interstate or the subsequent transportation or shipment of a firearm foreign commerce where the provisions of this paragraph are fully met*;

* * * * * * *

[(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity); except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by interstate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes; and] *(5) for any person to transfer, sell, trade, give, transport, or deliver any firearm to any person who does not reside in the same State as the transferor when the transferor knows or has reasonable cause to believe that the acquisition of such firearm by such person would be in violation of any published ordinance or law of the State or locality where the transferee resides or would be in violation of any published ordinance or law of the State or locality where such transfer occurs: Provided, That any licensed manufacturer, importer, or dealer shall be presumed, in the absence of evidence to the contrary, to have had actual knowledge of the published ordinances of such other State or locality, and that the transferor shall meet in person with any transferee (other than a licensed manufacturer, importer, or dealer) to accomplish the transfer unless prior thereto such person had met in person to negotiate the transfer, or the sale, transfer, or delivery is otherwise permitted by this chapter, or is in accordance with other provisions of this Act. This paragraph shall not preclude the subsequent transportation or shipment of a firearm by a nonlicensee in interstate commerce where*

the provisions of this paragraph are fully met, and shall not apply to the loan or rental of a firearm to any person for temporary use for lawful purposes; and

* * * * * * *

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer or licensed collector to sell or deliver—

* * * * * * *

(2) any firearm [or ammunition] to any person in any State where the purchase or possession by such person of such firearm or ammunition would be in violation of any State or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

[(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is l[illegible]ed, except that this paragraph (A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee's business premises, (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes, and (C) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail;]

[4] (*3*) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; [and]

[(5)] (*4*) any firearm [or ammunition] to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity[.]*;* and

(5) deliver any handgun to any person after negotiating for the sale of such handgun to that person, before the expiration of 14 days after the date of the first payment for such handgun is received from the buyer of same, except that the delay period provided for herein shall not apply in any case where (A) the chief law enforcement officer of the purchaser's place of residence certifies, by notarized statement to the seller, that the immediate delivery of the handgun to the buyer is, to his knowledge, necessary to protect against a threat of immediate danger to the physical safety of the buyer, or (B) the purchaser provides proof that he has purchased another handgun within the previous twelve months and that in such purchase he complied with such 14 day waiting period.

[Paragraphs (1), (2) (3), and (4)] *Paragraphs (1), (2), and (3),* of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. [Paragraph (4)] *Paragraph (3)* of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary.

* * * * * * *

(d) It shall be unlawful for any [licensed importer, licensed manufacturer, licensed dealer, or licensed collector] *any person* to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); [or]

(4) has been adjudicated as a mental defective or has been committed to any mental institution[.];

(5) who, being an alien, is illegally or unlawfully in the United States;

(6) who has been discharged from the Armed Forces under dishonorable conditions; or

(7) who, having been a citizen of the United States, has renounced his citizenship.

* * * * * * *

(g) It shall be unlawful for any person—

(1) who [is under indictment for, or who] has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); [or]

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien, is illegally or unlawfully in the United States;

(6) who has been discharged from the Armed Forces under honorable conditions; or

(7) who, having been a citizen of the United States, has renounced his citizenship;

[to ship or transport any firearm or ammunition in interstate or foreign commerce.] *to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.*

(h) It shall be unlawful for any *individual who to his knowledge and while being employed by any* person—

(1) who [is under indictment for, or who] has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954; [or]

(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

(5) who, being an alien, is illegally or unlawfully in the United States;

(6) who has been discharged from the Armed Forces under dishonorable conditions; or

(7) who having been a citizen of the United States, has renounced his citizenship;

[to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.] *in the course of such employment to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.*

(i) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate for foreign commerce.

[(i)](*j*) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearms or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammuntion was stolen.

[j](*k*) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

[k](*l*) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered.

[(*l*)] (*m*) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

[(m)], (*n*) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail tto properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

§ 923. Licensing

(a) [No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary.] *No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Secretary.* The application shall be in such form [and contain such information] *and contain only that information necessary to determine eligibility for licensing* as the Secretary shall by regulation prescribe. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

* * * * * * *

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of $1,000 per year;

(B) who is a pawnbroker dealing in firearms other than destructive devices, [or ammunition for firearms other than destructive devices,] a fee of $25 per year; or

(C) who is not a dealer in destructive devices or a pawnbroker, a fee of $10 per year.

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Secretary. The application shall be in such form [and contain such information] as the Secretary shall by regulation prescribe. [The fee for such license shall by regulation prescribe.] The fee for such license shall be $10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

(c) Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license. *Provided, however, That*

nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer: Provided further, That if any firearm is so disposed of by a licensee within one year of its transfer from his business inventory into his personal collection or if such disposition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of his business inventory.

* * * * * * *

(e) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has *willfully* violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter. The Secretary's action under this subsection may be reviewed only as provided in subsection (f) of this section.

(f)(1) * * *

* * * * * * *

(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a *de novo* judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding *whether or not such evidence was considered at the hearing held under paragraph (2)*. If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary ot comply with the judgment of the court.

(4) If criminal proceedings are instituted against a licensee alleging violations of this chapter or regulations promulgated thereunder, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government prior to trial upon such charges, the Secretary shall be absolutely barred from denying or revoking any license granted under the provisions of this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Secretary more than one year after the filing of the indictment or information.

[(g) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms and ammunition at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such importers, manufacturers, dealers, and collectors shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the

contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition importer, manufacturer, dealer, or collector for the purpose of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition.]

(g) (1) Each licensed importer, licensed manufacturer, and licensed dealer, shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms at his place of business for such period, and in such form, as the Secretary may by regulations prescribe. The Secretary, when he has reasonable cause to believe a violation of this law has occurred, and that evidence thereof may be found on such premises may, upon demonstrating such cause before a Federal magistrate, and securing from him a warrant authorizing entry, enter during business hours the premises (including places of storage) of any firearms importer, manufacturer, or dealer, or any importer or manufacturer of ammunition, for the purposes of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, or dealer, under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, or dealer, at such premises. Moreover, the Secretary may inspect the inventory and records of a licensee without such cause, (A) for a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee; or (B) no more than once in any twelve consecutive months and upon a reasonable notice, but the Secretary shall bring no criminal charges against the licensee based upon such inspection or any recordkeeping errors found, other than for sales to a prohibited person; or (C) when such inspections or inquiries may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. Such procedure shall not be construed as authorizing the Secretary to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Secretary seizes such records or documents, copies shall be provided the licensee within a reasonable time. The Secretary may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition and he may provide information to the extent such information may be contained in the records required to be maintained by the provisions

of this chapter, when so requested by any Federal, State, or local law enforcement agency.

(2) Each licensed collector shall maintain in a bound volume the nature of which the Secretary may by regulations prescribe, records of the receipt, sale, or other disposition, of firearms. Such records shall include the name and addresses of any person to whom the collector sells or otherwise disposes of a firearm.

* * * * * * *

[(j) This section shall not apply to anyone who engages only in hand loading, reloading, or custom loading ammunition for his own firearm, and who does not hand load, reload, or custom load ammunition for others.]

§ 924. Penalties

(a) Whoever *willfully* violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or in applying for any license or exemption or relief from disability under the provisions of this chapter, shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

* * * * * * *

[(c) Whoever—

(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States, or

(2) carries a firearm unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States.

shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsectiton run concurrently with any term of imprisonment imposed for the commission of such felony.]

(c) Whoever (1) uses any firearm or destructive device against the person of another, to commit a felony for which he may be prosecuted in a court of the United States, or (2) carries a firearm or destructive device unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States shall, in addition to the punishment provided for the commission of such a felony, be sentenced to a term of imprisonment of not less than one year nor more than ten years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment of not less than five years nor more than twenty-five years. Not-

withstanding any other provision of law, in the case of any conviction under subsection (c)(1), the court shall not suspend the sentence of such person or give him a probationary sentence, nor shall such person be paroled or furloughed before completing such minimum sentence, nor shall any term of imprisonment imposed under this subsection (c) run concurrently with any term of imprisonment imposed for the commission of such other felony: Provided, That no person shall be sentenced under this subsection if he established to the satisfaction of the court that the use of the firearm or destructive device was to protect his person or the person of another from an honestly perceived immediate danger, or was honestly perceived in defense of his person, or the person of another or the property of either from conduct constituting a felony, or was honestly effecting the arrest of a person in immediate flight from said felony.

[(d) Any firearm or ammunition involved in or used or intended to be used in, any violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.]

(d)(1) Any firearm or ammunition involved in or used in any willful violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and dispositnoi of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: Provided, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, the seized firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued

thereunder, or any other criminal law of the United States, shall be subject to seizure, forfeiture, and disposition.

§ 925. Exceptions: Relief from disabilities

* * * * * * *

(c) A person who [has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)] *is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition* may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, *transportation* or possession of firearms [and incurred by reason of such conviction,] and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. *Any person whose application for relief from disabilities is denied by the Seecretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. In a proceeding conducted under this subsection, the scope of judicial review shall be governed by section 706 of title 5, United States Code. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice.* A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter by reason of such a conviction, shall not be barred by such conviction from further operations under his license pending final action on a application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

(d) The Secretary [may authorize] *shall authorize* a firearm or ammunition to be imported or brought into the United States or any possession thereof if [the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretray that] the firearm or ammunition—

* * * * * * *

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is [generally recognized as particularly] suitable for or readily adaptable to sporting purposes, excluding surplus military firearms; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Secretary [may permit] *shall permit* the conditional importation or bringing in of a firearm or ammunition for examination and testing in connecttion with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

§ 926. Rules and regulations

(*a*) The Secretary may prescribe *only* such rules and regulations [as he deems reasonably] *as are* necessary to carry out the provisions of this chapter, including—

* * * * * * *

[The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations] *Provided, That no such rule or regulation promulgated after the effective date of this Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system or registration of firearms, firearms owners, or firearms transactions or dispositions be established.*

(*b*) *The Secretary shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, prior to prescribing such rules and regulations.*

(*c*) *The Secretary shall not prescribe regulations that require purchasers of black powder under the exemption provided in section 845(a)(5) of title 18, United States Code, to complete affidavits or forms attesting to that exemption.*".

§ 927. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together*: Provided, however, That any provision of any legislation enacted, or of any rule or regulation promulgated, by any State or a political subdivision which prohibits or has the effect of prohibiting the transportation of a firearm or ammunition in interstate commerce through such State, when such firearm is unloaded and not readily accessible, shall be null and void.*

* * * * * * *

TITLE 18—APPENDIX

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[Unlawful Possession or Receipt of Firearms (Title VII of Pub. L. 90-351)]	1393
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[UNLAWFUL POSSESSION OR RECEIPT OF FIREARMS

[Pub. L. 90-351, title VII, §§ 1201-1203, June 19, 1968, 82 Stat. 236, as amended

[§ 1201. Congressional findings and declaration

[The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged

under dishonorable conditions, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

[(1) a burden on commerce or threat affecting the free flow of commerce,

[(2) a threat to the safety of the President of the United States and Vice President of the United States,

[(3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

[(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.] *Repealed.*

[§ 1202. Receipt, possession, or transportation of firearms

[Persons liable; penalties for violations

[(a) Any person who—

[(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

[(2) has been discharged from the Armed Forces under dishonorable conditions, or

[(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

[(4) having been a citizen of the United States has renounced his citizenship, or

[(5) being an alien is illegally or unlawfully in the United States,

and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

[Employment; persons liable; penalties for violations

[(b) Any individual who to his knowledge and while being employed by any person who—

[(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

[(2) has been discharged from the Armed Forces under dishonorable conditions, or

[(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

[(4) having been a citizen of the United States has renounced his citizenship, or

[(5) being an alien is illegally or unlawfully in the United States,

and who, in the course of such employment, receives, possesses, or transports in commerce or affecting commerce, after the date of the enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

[Definitions

[(c) As used in this title—

[(1) "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country;

[(2) "felony" means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less;

[(3) "firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term shall include any handgun, rifle, or shotgun;

[(4) "destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter;

[(5) "handgun" means any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition, or any other firearm originally designed to be fired by the use of a single hand;

[(6) "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

[(7) "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.] *Repealed.*

[§ 1203. Exemptions

[This title shall not apply to—

[(1) any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison; and

[(2) any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.] *Repealed.*

VII. Votes of the Committee

1. Kennedy amendment to restrict the provisions of S. 1030 to long-guns. Defeated by a vote of 3 yeas to 12 nays.

2. Kennedy amendment to restore a ban on the importation of parts used in the manufacture of "Saturday night specials." Defeated by a vote of 2 yeas to 10 nays.

3. Kennedy amendment to prohibit the importation of "snubbies" (barrel length of less than 4 inches). Defeated by a vote of 4 yeas to 8 nays.

4. Dole substitute amendment to a Kennedy amendment to require a 14-day waiting period prior to delivery of purchased handgun and permit optional local police check by the dealer. Adopted by a vote of 8 yeas to 5 nays.

5. Kennedy amendment to ban handgun sales by pawnshops. Defeated by a vote of 3 yeas to 12 nays.

6. Kennedy amendment to change mandatory penalty for use of firearm in the commission of a crime from 1 to 5 years, to 2 to 5 years. Adopted by a vote of 10 yeas to 2 nays.

7. Final passage of S. 1030. 13 yeas to 3 nays as follows:

YEA	NAY
Laxalt	Mathias
Hatch	Kennedy
Dole	Metzenbaum
Simpson	
East	
Grassley	
Denton	
Byrd	
DeConcini	
Leahy	
Baucus	
Heflin	
Thurmond	

Recorded in favor—Specter.
Not voting—Biden.

VIII. Regulatory Impact Statement

In compliance with rule 29.5 of the Standing Rules of the Senate, the Committee finds that the implementation of the bill, as reported, will not result in increased regulation. S. 1030, as reported, will decrease regulation of law-abiding citizens who choose to own and use firearms for legitimate purposes. The Committee believes a reduction in regulation by the agencies enforcing this law of law-abiding citizens will allow the agencies to more effectively regulate violators of the firearms laws as originally intended by the Congress. The more effective enforcement of the criminal laws bearing on regulated conduct covered by this bill will have a salutary effect on Federal regulation without increasing impact of the overall regulatory scheme involved.

IX. Cost of Legislation

In accordance with section 252(a) of the Legislative Reorganization Act (2 U.S.C. sec. 190(j)), the Committee concludes that the added costs to the Government due to this bill are not ascertainable at the present time. The Congressional Budget Office has advised the Committee that because of the pendency of a reorganization proposal for the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury, it is not possible to estimate the costs of enforcement under the provisions of S. 1030 as reported.

X. Conclusion

The Committee on the Judiciary recommends prompt enactment of S. 1030, as amended, the Federal Firearms Owners' Protection Act. This Act is a matter of urgent priority for the 97th Congress. At the same time, the Committee is concerned that the enforcement agency has disregarded rights guaranteed by the Constitution and laws of the United States.

It has trampled upon the Second Amendment by chilling exercises of the right to keep and bear arms by law-abiding citizens.

It has offended the Fourth Amendment by unreasonably searching and seizing private property.

It has ignored the Fifth Amendment by taking private property without just compensation and by entrapping honest citizens without regard for their right to due process of law.

In light of this evidence, reform of federal firearm laws is necessary to protect the most vital rights of American citizens—their Constitutional rights and their Civil liberties. Immediate passage of S. 1030 will deal with violent criminal offenses, rather than attempting to control the legitimate users of firearms. Passage of S. 1030, as amended, will in no way interfere with the legitimate interest of the Nation's sportsmen, nor would it prevent the acquisition of firearms—whether handguns or long guns—for lawful self-defense and personal protection. S. 1030, as amended, shifts the focus away from regulatory impositions upon law-abiding firearms owners and toward criminal sanctions against intentional, violent offenders.

Senator Strom Thurmond,
Chairman, Senate Committee on the Judiciary,
(on behalf of the Majority of the Committee).

XI. SUPPLEMENTAL VIEWS OF SENATOR DOLE

The subject of federal gun control legislation has been one of the most chronically controversial and emotionally charged issues with which the Congress has had to wrestle in recent years. In a time of dramatically increasing crime, including crimes of violence committed with guns, repeated calls have been made for more restrictive gun control. At the same time, private ownership of firearms for lawful purposes, including sport, recreation and self-protection, has also increased dramatically. Since 1968, the last time the Federal Gun Control laws were substantially revised, at least 25 million firearms have been sold through legitimate channels of commerce. These guns have been added to those previously held in private hands. Private ownership of all firearms in this country may be somewhere between 150 to 200 million weapons.

The overwhelming majority of these firearms are lawfully owned and used. This ownership is probably unique in the world and represents a precious constitutional right. This right, however, is not unlimited. It is subject to reasonable restraint by law and regulation by the federal government, the states and their political subdivisions. There are federal and state prohibitions on transfer, possession and use of firearms by those groups of individuals such as convicted felons who have a high potential for misuse of guns. Although criminal misuse is almost statistically insignificant in contrast to lawful ownership and enjoyment of firearms, this misuse still represents one of this nation's most serious crime control problems.

It is the view of this Senator that federal gun control legislation should have as its objective the achievement of the proper balance between preservation of a vital constitutional right and a reasonable exercise of police power to deter and punish criminal misuse. The federal law must be carefully crafted so as to effectively regulate lawful interstate commerce in firearms, to proscribe certain criminal misuse of those firearms and to assist state and local enforcement authorities to discharges their public safety functions.

It is with this perspective that the Senator from Kansas has approached the consideration of S. 1030.

S. 1030.

In previous Congresses, the Senator from Kansas has been a cosponsor of Senator McClure's bill and still remains committed to the principles embodied in that bill. Upon detailed analysis of the McClure bill, however, there were some provisions which needed modification and, in some cases, there were gaps in the bill which needed to be filled. A package of amendments offered in full Committee by Senator Hatch were needed improvements which modified the McClure bill to remove unnecessary restrictions on those who were

charged with enforcement of the federal gun control legislation. My understanding is that the Hatch amendments resulted from a series of negotiations between the Administration and interested sporting organizations.

Other areas remained where S. 1030 needed improvement to make overdue changes in the 1968 Gun Control Act. This Senator circulated amendments for comment but a consensus of those involved in the legaslative process on this bill was that these amendments should be held off for consideration on the Senate floor.

The first amendment would "decriminalize" certain bookkeeping and technical violations of the Gun Control Act which deal with regulation of legitimate commerce in firearms. S. 1030 would simply downgrades violations from five-year federal felonies to misdemeanors. This is not enough. These violations should be converted from criminal

The "first amendment would "decriminalize" certain bookkeeping not enough. These violations should be converted from criminal offenses to civil penalties with a schedule of fines to be imposed by impartial federal magistrates. If a pattern and practice develops of repeated civil violations, then a criminal sanction would be imposed. This is a regulatory approach that is consistent with the general movement towards federal deregulation in a variety of industries and commercial activities and is consistent with the action of the Committee on Judiciary in its very recent consideration of S. 2222, the Immigration Bill.

Second, S. 1030 left intact the protectionist provisions of the 1968 Act which placed certain restrictions on imported firearms that do not apply to domestically produced firearms of similar quality and configuration. Simple commercial fairness demands that the imports be treated the same as domestically manufactured guns. Either the restrictions should be removed altogether or they should be applied across the board to all firearms. I refer specifically to the "suitable for sporting purposes" requirement for imports. There are also prohibitions on importation of military surplus. Surplus bolt-action rifles, which can be readily converted to sporting purposes and limited quantities of weapons which have high value for collectors should also be permitted to be imported.

Third, the McClure bill removes some restrictions on interstate mail-order sales and imports by individuals, but still does not go far enough to rectify the restraints placed on interstate mailorder sales by the 1968 Act. The 1968 Act provided for an affidavit procedure and waiting period to apply to intrastate mailorder sales, but banned the interstate sales. Fourteen years experience with the affidavit procedure indicates that while it has not been used frequently, it has not been significantly abused. Based on this experience, the 1968 Act should be amended to apply the affidavit procedure to all mailorder sales, not just sales within a single state.

POSITIVE IDENTIFICATION FOR PURCHASES OF FIREARMS

One of the major problems in the administration of the Gun Control Act of 1968 is that too often inadequate or false identification is presented to the dealer by a prospective purchaser who is not legally able to purchase or possess firearms under the terms of the Act. In the

typical situation, only one form of identification—a drivers license—is required to support the purchaser's certification that he or she is eligible to buy the gun. In some states, drivers licenses can be readily obtained without positive identification of the individual being required before issuance of license. The current state-of-the-art of criminal identification technology still requires a comparison of fingerprint images against a database of fingerprint images for a "positive identification" of an individual to be established. Other typical identifiers such as name, date of birth, place of residence, social security number, drivers license identification and so forth, can be fraudulently obtained or manufactured too easily by individuals with criminal intent. Although such an individual faces federal felony sanctions for the submission of false identification or the making of false statements in attempting to purchase a firearm from a federally licensed dealer, the threat of this sanction is not a sufficient deterrent where the individual has criminal intent to misuse a firearm.

A change in the Gun Control Act should be made to move towards the ideal of positive identification by requiring three forms of commercially acceptable identification such as a driver's license, major credit card, or social security card. This should not impose an unreasonable burden on the purchaser or significant red tape on the seller. Instead, there would seem to be a reasonable opportunity to reduce substantially the abuses of the current system without the necessity of a detailed criminal history record check by federal, state, or local enforcement authorities.

WAITING PERIOD

The Committee favorably adopted a compromise which would require persons attempting to purchase handguns over the counter from federally licensed firearms dealers to wait 14 days after date of initial payment before the handgun can be delivered to the buyer. This compromise is identical to an amendment initially offered by the Senator from Kansas except that the waiting period is 14 days rather than 7.

The purpose of this amendment is to provide for a "cooling off period" which would act as a deterrent to individuals who, in a fit of passion, might acquire a handgun for the purpose of committing a violent crime. An opportunity would also be afforded for dealer's records to be available during the cooling off period for those enforcement authorities who are authorized by federal or state law, or local published ordinance to inspect the dealer's records to insure compliance.

In two circumstances the waiting period would be waived. First, where the purchaser's chief law enforcement officer, by notarized statement to the seller, certifies that immediate delivery of the handgun to the buyer is necessary to protect against a threat of physical danger to the buyer. Second, the 14-day period would be waived when the purchaser provides proof to the seller that he had complied with the waiting period within the previous twelve months in the purchase of another handgun.

The amendment is intended to complement the waiting period required in Section 922(C) of Title 18 of the United States Code.

Since the enactment of the Gun Control Act of 1968, a 7-day waiting period has been required before a dealer could ship a firearm in intrastate commerce to a purchaser. However, unlike Section 922(c) this amendment would *not* require notification of the purchaser's chief law enforcement officer.

In mail order transactions the dealer's records are not readily available or accessible to the purchaser's enforcement officials. However, in over-the-counter sales, records are available for inspection by the local chief or his representative. It would be unwise and impractical for local police departments, as a matter of Federal law, to amass files of over-the-counter transactions. When valid requirements exist for tracing of guns that have been criminally misused, the records of the retail sale are available for inspection at the dealer's place of business. To require more would mean the establishment of expensive and redundant record keeping systems by local enforcement officials.

The amendment offered by Senator Kennedy, in addition to imposing a 21 day waiting period, would have required a name search of the criminal history records of the Federal Bureau of Investigation to determine whether the purchaser would be prohibited from purchasing, transporting, receiving or possessing firearms. This approach has substantial difficulties. The F.B.I.'s criminal identification program is already seriously overburdened in dealing with its current workload. Since October 1, 1981, the F.B.I. has suspended the processing of requests for criminal background checks from banks and financial institutions for employment purposes. Even though authorized by federal law, these requests are of a relatively low priority and have significantly overtaxed the limited resources of the F.B.I. To impose another three to four million requests per year upon the already overloaded system would either cause a complete breakdown or require a several-fold expansion in the Bureau's system at great expense and at risk of building a "big brother" database of gun transactions. This information is now contained in the records of tens of thousands of federally licensed dealers throughout the United States. "Traces" of guns criminally misused to the point of the retail sale can be made quickly in a matter of minutes by federal or state and local authorities without the expense and potential disadvantages of having this made available centrally at F.B.I. headquarters in Washington.

Furthermore, in order to avoid misidentification of the prospective handgun purchaser, under the current state-of-the-art technology, positive identification of the purchaser can be accomplished *only* by comparing ten fingerprint images against fingerprint cards in federal or state criminal identification files. This procedure would be expensive, burdensome, and filled with delays far beyond the 21 day period.

The federal government does not possess the legal authority to place an affirmative burden on state and local enforcement authorities to require them to assume the responsibility for ascertaining the bona fides of the purchaser's eligibility to buy a firearm.

For these reasons, I offered the "cooling off" substitute for the amendment advocated by Senator Kennedy. The cooling off period may be an inconvenience for handgun purchasers; but it may save lives and reduce crimes of passion.

Ammunition

During the consideration of S. 1030, the Committee discussed imposition of a ban of commercial sales of certain ammunition except for law enforcement purposes. Senator Kennedy proposed a ban on a "KTW" type of handgun ammunition which is a teflon-coated steel jacketed handgun round. This ammunition can penetrate virtually all kinds of soft body armour now widely used by law enforcement personnel.

The KTW ammunition was the subject of a national television report recently which demonstrated its ability to penetrate the soft body armour. Following this disclosure, several members of Congress have introduced legislation to remove the ammunition from commercial channels and to restrict its use to law enforcement purposes.

Since the Law Enforcement Assistance Administration supported the development of soft body armour for police use in 1973, more than 400 officer's lives have been saved. According to a knowledgeable official at the National Institute of Justice, so far as can be determined, not a single attack involved the use of the KTW round even though it has been available on the commercial market for more than 10 years. The Kennedy amendment would simply totally ban the sale of this type of ammunition rather than regulate its sale.

There are two major problems with the Kennedy amendment. First, the definition of the prohibited round is broad enough to include other kinds of sporting ammunition with or without the teflon coating that are in widespread use by the gun owning public. Second, there are other types of potentially extremely dangerous ammunition that are not included in the Kennedy amendment, such as the "devastator" round used in the recent assassination attempt on President Reagan. Also, ammunition for destructive devices such as bazookas, mortars, and anti-tank weapons should be covered.

As a substitute for the KTW outright ban, the Senator from Kansas has prepared an amendment to S. 1030 for introduction on the Senate floor which would require federal licensees to record each transaction of all three kinds of ammunition. In addition, large scale sales of ammunition of any kind, that is 5000 rounds or more, would also have to be recorded by the dealer.

National Firearms Act

Title 2 of the Gun Control Act of 1968 contained a comprehensive revision of the National Firearms Act of 1934, the so-called Machine Gun Act. This Act strictly regulates manufacture, distribution, sale, possession and ownership of automatic weapons, machine guns, sawed-off rifles and shotguns, and other destructive devices. Although a Title of the Gun Control Act, the National Firearms Act is a part of the Internal Revenue Code since it provides for any transfer taxes on these weapons and a system of national registration. The 1968 amendments to the National Act were processed by the Senate Judiciary Committee with the concurrence of the Committee on Finance, which, of course, has jurisdiction over the Internal Revenue Code.

S. 1030 only contains amendments to the Federal Firearms Act of 1938 (Title 1 of the Gun Control Act of 1968). It is my view that certain amendments, mostly of a technical nature, are necessary to deal

with certain problems and the administration of the National Act since it was last revised in 1968. An amendment has been prepared for consideration on the Senate floor which has the following major provisions:

1. The 1968 Act provided for a grace period in which any person in possession of an unregistered firearm at the time of the effective date of the law, would have six months to come into compliance by registration and payment of appropriate taxes. The amendment provides for a permanent "grace" period allowing any individual to come forward so long as there was no pending federal or state criminal investigation or action at the time of registration. This is to encourage individuals who possess these dangerous weapons to come into full compliance with the law.

2. A companion provision would be added to authorize individuals who acquire National Act weapons by reason of inheritance to register them without civil or criminal liability and without payment of further transfer taxes.

3. The definition of destructive devices would be amended to include recent advances in the state of military weaponry including several kinds of high energy devices which are under intensive research and development by the military and others at the present time.

4. Section 6103 of the Internal Revenue Code would be amended to exclude from the definition of "tax return information" any information required to be submitted to the Bureau of Alcohol, Tobacco, and Forearms or a successor agency under provisions of the National Firearms Act.

5. The Secretary of Treasury would be authorized to find that certain semi-automatic weapons could not be readily converted or restored to shoot automatically. If such firearms are found to be readily convertible then they could not be sold without complying with the provisions of the National Firearms Act.

6. Several changes would be made to cover weapons which can be readily converted to an automatic mode by the simple modification of or addition of a single part in addition to current requirements which include a "combination of parts" for the conversion. The change would also cover "kits" or parts to be used in the conversion as well as parts or major parts to be used in assembling silencers or mufflers for any firearm.

These changes retain the current regulatory structure of the National Firearms Act. It does not deal with sporting firearms except so-called short-barrelled or sawed-off rifles and shotguns and has been the case since 1934.

Reorganization of the Bureau of Alcohol, Tobacco and Firearms

One of the issues which the Judiciary Committee considered during its deliberations on S. 1030 was the proposed elimination, or reorganization of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms (BATF). At my initiative, the Committee deferred any action on this issue and left it for determination by the Committee on Finance which has jurisdiction over the Treasury Department and its law enforcement agencies, and the Senate Appropriations Subcom-

mittee on Treasury, Postal Service, and General Government which has held detailed hearings on the issue. Two members of the Committee on Judiciary, Senator Laxalt of Nevada and Senator DeConcini of Arizona, are members of that Subcommittee.

Since its creation more than a decade ago, the BATF has been the subject of such criticism for its methods and tactics in the discharge of its responsibility to enforce the Gun Control Act of 1968. As a result, proposals have been made to reduce its funding and scope of operations, or even transfer its functions to other federal agencies, such as the Federal Bureau of Investigation, the U.S. Secret Service or the U.S. Customs Service. This Senator will not attempt to reach a conclusion on this complex and controversial measure at this time, but simply will reiterate a position taken when S. 1030 was processed by the Committee on Judiciary. My view was and is that this is a matter which the Appropriations and Finance Committees should consider and resolve.

Conclusion

S. 1030 is the first major revision of the Federal gun control laws in fourteen years. It will go a long way towards correcting defects and shortcomings of this controversial legislation. With additional amendments such as those suggested in these views, further improvements can be made in the existing law from the standpoint of law abiding gun owners, dealers and manufacturers as well as law enforcement authorities.

The Congress has a sworn duty to protect and defend the Constitution and the precious rights bestowed by it on our citizens. It also must face serious problems of violent crime and provide workable tools to enforcement authorities to deal with those who criminally misuse guns or who recklessly make it possible for others to do so. Gun control legislation is not a panacea for eliminating violent crime from our society. But it can be a significant factor to assist in prevention and control of gun crimes. The Congress must strive to achieve a balance of these vital interests.

Robert Dole.

XII. SUPPLEMENTAL VIEWS OF SENATOR BAUCUS

The necessity of legislation such as S. 1030 is obvious. For too many years those citizens who have chosen to own and use firearms in a lawful manner have been the subject of improper enforcement tactics, entrapment, unjust confiscations, and undue regulation. S. 1030 does much to restore the balance by directing enforcement away from technical regulations which do not affect crime and toward apprehension of actual criminal abusers of firearms. This is the central thrust of S. 1030.

It is precisely this thrust which is so impaired by the amendment requiring a fourteen day "waiting period" and police background probe for any purchase of a handgun. This is a provision which adds technical requirements, rather than alleviating them, and a provision which focuses enforcement efforts on technicalities rather than violent criminals. No one can seriously believe that violent offenders—most of whom secure their guns by theft, few of whom would purchase from a retail store in any event—will find their supplies of weapons interdicted by this measure. Nor is there any evidence that those who kill in "crimes of passion" depend upon speedy firearms purchases at retail stores; few individuals in an uncontrollable rage will stop their criminal assault, drive to a store, purchase a firearm and then return. Assaults of this type are committed with the weapons at hand and are hardly likely to be interrupted for a shopping trip; most in any event occur after 10 p.m. and before 2 a.m., when retail stores are universally closed. The fourteen day waiting period will not affect murderers or rapists, although it may affect their victims. Until a means is found to require a rapist, robber or murderer to give his victim at least fifteen days advance notice, we will oppose laws which require that victim to wait fourteen days to obtain a handgun.

Such a law is in addition inconsistent with basic concepts of federalism and comity with state and local institutions. The choice as to how long a person ought to wait before acquiring a firearm and whether local authorities ought to probe his or her private life is a choice peculiarly within the competence of local authorities. A number of states have adopted such waiting periods to date; an even greater number have chosen not to. We cannot see where it is the function of the national legislature to impose such a standard, which obviously cannot simultaneously meet the needs of New York and Utah, Massachusetts and Mississippi, or Washington, D.C. and Helena. In the very month the committee amendment reached its vote, for instance, the Maryland House voted down an extension of its waiting period, and county commissioners in Kentucky rejected a local waiting period—the state legislature have earlier entered a similar decision. We cannot see where it is the function of the United States Senate to define waiting periods in these areas in defiance of decisions by local elected officials.

Nor is there any pragmatic basis for endorsing such regulation. Multiple regression analyses of crime rates and firearm laws have to date been undertaken by Douglas Murray of the University of Wisconsin, Matthew DeZee of Florida State University, and Joseph Magaddino of California State University at Long Beach. Each of these computer-assisted studies, which took into account crime rates, gun laws including waiting periods, and social variables including poverty, age and sex distributions, and average incomes of each state, found no discernable relationship between waiting periods and murder, robbery, assault, suicide or accidental firearm death rates. In hearings held before the Subcommittee on Criminal Laws, on March 4, 1982, Professor Phillip Cook testified that his studies indicated waiting periods were one of the least significant and least beneficial forms of federal firearm control proposed; the states with the major violent crime problems had already chosen to adopt them, and there was no evidence that such measures had reduced violent crime.

Indeed, the experience of states which have chosen to adopt such restrictions in recent years, or to expand existing waiting period requirements, uniformly has been negative. California, for instance, adopted a five day waiting period in 1965; five years later its murder rate had increased from 4.7 to 6.9 per 100,000 population. By 1975, its murder rate had reached 10.4, and in the following year it expanded the waiting period to 15 days. By 1980, its murder rate had reached 14.5—an increase of nearly 40 percent over what it had been with the shorter waiting period. The chart below documents in detail the failure of waiting periods, whether short or long, to influence murder and violent crime rates.

HOMICIDE AND VIOLENT CRIME RATES IN 5 STATES WITH HANDGUN PURCHASE WAITING PERIODS

[Rate per 100,000 population]

	1965	1970	1975	1980	Waiting period
California:					
Violent crime	282.1	474.8	655.4	893.6	5-day waiting period adopted 1965; 15-day waiting period adopted 1976.
Homicide	4.7	6.9	10.4	14.5	
Connecticut:					
Violent crime	69.6	170.4	268.4	412.5	7-day waiting period adopted 1965; 14-day waiting period adopted 1975.
Homicide	1.6	3.5	3.9	4.7	
Illinois:					
Violent crime	322.7	467.9	549.7	494.3	Waiting period adopted in 1967.
Homicide	5.2	9.6	10.6	10.6	
Maryland:					
Violent crime	285.1	624.9	709.8	852.4	Waiting period adopted in 1966.
Homicide	6.7	9.2	10.7	9.5	
New Jersey:					
Violent crime	153.8	287.1	413.0	604.4	Waiting period adopted in 1966.
Homicide	3.2	5.7	6.8	6.9	

Data: F.B.I. Uniform Crime Reports.

Percentage change in violent crime and homicide rates between 1965 and 1980

	Percent
California:	
Violent crime	+216.7
Homicide	+208.5
Connecticut:	
Violent crime	+492.6
Homicide	+193.7
Illinois:	
Violent crime	+53.1
Homicide	+103.8
Maryland:	
Violent crime	+198.9
Homicide	+41.7
New Jersey:	
Violent crime	+292.9
Homicide	+115.6

NOTE: The increase in violent crime and homicide are marked. There is no empirical evidence that the handgun purchase waiting period has decreased or slowed the violent crime and homicide rates. There is no direct evidence to support any claims that gun control laws control crime.

We must conclude, therefore, that this amendment runs counter to the central purpose of S. 1030, which is to shift the criminal process away from legitimate firearms owners and wasteful regulations and toward productive criminal enforcement. If we were prepared to abridge the proper distribution of powers in a federal system—which we are not—we certainly would not choose to do so in order to impose a system which has failed in repeated experiments, been proven ineffectual in objective studies, and which logically cannot be expected to affect either professional criminals or those who commit crimes of passion. We will accordingly seek passage of S. 1030 without the waiting period amendment.

MAX BAUCUS.

XIII. ADDITIONAL VIEWS OF SENATOR EAST

It is essential to our system of government that only those matters permitted by the Constitution and required by prudence be committed to the federal government. For this reason federal legislation should be subject to careful scrutiny.

Such careful scrutiny of the federal legislation concerning firearms has yielded the widespread support enjoyed by S. 1030, a bill to amend that legislation where it has been found ineffectual and oppressive. I strongly support S. 1030. I am disturbed, however, by the amendment adopted by the Committee on the Judiciary which would require a fourteen day waiting period and police investigation before the purchase of certain firearms. This amendment is at odds with the purposes of S. 1030 and should be opposed for the very reasons that S. 1030 should be supported.

The amendment constitutes a federal intrusion into a matter best left to the states and localities. The law of the State of North Carolina, for instance, requires a prospective handgun purchaser to obtain a permit from the sheriff of his or her county. The people of each state should enjoy the freedom to determine under what circumstances, consistent with the Constitution, a person shall be able to purchase various types of firearms. This freedom is especially valuable when the wisdom of the proposed regulation is in dispute. Whether waiting periods prevent crimes or accidents involving firearms is an unanswered question. Several relevant studies indicate that waiting periods serve no useful purpose. Furthermore, intuition would suggest that waiting periods hinder responsible gun owners more than those bent on crime or liable to misuse the gun.

In sum, those considerations which weigh in favor of S. 1030 militate against this amendment. For this reason I favor passage of S. 1030 without it.

JOHN P. EAST.

XIV. MINORITY VIEWS OF SENATOR KENNEDY

I oppose this bill because it drastically weakens the already weak controls on the sale and transfer of "snubbies" and "Saturday Night Specials", which are the preferred weapons of criminals. After nuclear arms control and the economy, violent crime is the issue of greatest concern to the American people. Congress has a responsibility to deal more effectively with the increasingly serious challenge of crime, and it is especially troubling that this legislation takes us in the wrong direction.

I share the basic goal of the sponsors of the bill to relieve unnecessary regulatory burdens on the legitimate purchase of firearms by hunters and sportsmen and by law-abiding citizens seeking weapons for self-protection. I have made clear that I would support this bill if it is restricted to reducing regulations that have created serious inconveniences and other difficulties for hunters, sportsmen, and law-abiding citizens. We should eliminate excessive red-tape and regulations affecting the sale of rifles, shotguns, and sporting weapons.

But I believe we must strengthen, not weaken, the law as it applies to the types of handguns most often used in crime. Responsible measures in this area are an important part of the war on crime, and are not inconsistent with measures to reduce the burden of existing law on hunters and sportsmen. A column last year by James J. Kilpatrick, reprinted in the Appendix, makes this point eloquently and, in my view, irrefutably.

Over the past decade every government commission on crime control—including Attorney General William French Smith's recent Task Force on Violent Crime—has recommended strengthening federal laws on handguns. This step is especially urgent in relation to "snubbies"—handguns which have a barrel length of three inches or less, and which are involved in two out of every three murders, rapes, robberies and muggings in the United States.

Since I first introduced handgun control legislation a decade ago, the number of handguns in circulation in the United States has nearly doubled—from 31 million in the early 1970's to over 60 million today. Instead of 15 handguns for every 100 Americans, there are now more than 25.

A new handgun is sold every 13 seconds somewhere in America. In a single year, 2.5 million more handguns are added to the national stockpile. By the year 2000, there will be 100 million handguns in circulation in America—enough to arm a third of our population.

Every day, additional evidence demonstrates the correlation between violent handgun crime and the availability of easily concealable handguns. Such handguns have only one purpose—to kill or threaten another human being.

Because we fail to act, the casualty list climbs higher day by day. Each year, handguns are used in more than 10,000 murders in the

United States and 300,000 crimes of violence. Fifty percent of all murders in the United States are committed with handguns. Every fifty minutes, another American is murdered by a handgun. By this time tomorrow, 29 more Americans will die in handgun murders.

There is no justification for the enactment of legislation that will inevitably increase this body count. The National Rifle Association has never explained why it is necessary to protect the legitimate interests of hunters and sportsmen by making handguns more accessible to criminals. Unfortunately, however, the Committee rejected the amendment I proposed to apply the bill only to sporting weapons, and to retain the current law for handguns, such as snubbies and Saturday Night Specials.

As a result, the McClure-Volkmer-Hatch bill is an unacceptable assault on existing law and a clear threat to law enforcement. It systematically weakens each of the provisions in the Gun Control Act of 1968 that restrict the interstate sale and transfer of firearms. Table I outlines the important areas in which the protections of existing law are cut back. As an internal Department of Justice analysis of the bill concludes: ". . . S. 1030 would move in the opposite direction and increase the pool of firearms that could be purchased either in person or through the facilities of interstate commerce without any record of the transaction or adequate check on the purchaser." It notes that the bill "represents a serious setback for law enforcement and for the safety of our citizens without a corresponding benefit to the millions of law-abiding gun owners."

The Committee did agree, however, to accept a waiting-period amendment I offered with Senator Dole to provide a local police check of a purchaser before a handgun sale is completed. In addition, the committee adopted by amendment to increase the mandatory prison term for a defendant convicted of a federal offense while using a firearm from one to two years. These amendments are worthwhile improvements over current law, but they do not outweigh the other damaging provisions of this bill.

Finally, the Committee rejected other amendments I offered to strengthen existing law. One such amendment was intended to close the loophole in the 1968 Act that allows parts for Saturday Night Specials to be imported into this country, then assembled and sold, even though the assembled weapon could not be imported. Another would have banned the sale of handguns by pawnshops, a notorious source of guns for criminals.

In addition, the Committee did not act on my amendment to prohibit the sale of KTW and other armor-piercing bullets and other ammunition capable of penetrating protective vests by police officers. This proposal is broadly favored by law enforcement authorities concerned about the growing use of this ammunition by criminals. There is no legitimate sporting purpose for such ammunition—neither the National Rifle Association nor any hunter has suggested that they need such ammunition for handguns.

In its present form, this legislation is an unacceptable special interest measure. It should not be approved by the Senate without major amendments to protect the public interest.

EDWARD M. KENNEDY.

[From the Washington Star, May 19, 1981]

TIME FOR GOOD GUYS TO UNITE ON GUNS

(By James J. Kilpatrick)

On April 9, Sen. Edward Kennedy, D-Mass., introduced the "Handgun Crime Control Act of 1981." On April 29, Sen. James A. McClure, R-Idaho, introduced the "Federal Firearms Reform Act of 1981." The two senators and their bills are poles apart, but both gentlemen are on the right track.

Mr. Kennedy's concern goes to the heart of the matter: He wants to begin to make it more difficult for criminals and psychopaths to acquire easily concealable handguns.

Mr. McClure's concern is narrower. He wants to correct the abuses of the Bureau of Alcohol, Tobacco and Firearms (BATF) in the bureau's enforcement of existing law.

ACRIMONIOUS DEBATE

Surely it must be possible for reasonably minded men to agree on these objectives. It is absurd to suggest that Sen. McClure and the National Rifle Association want to coddle gun-slinging criminals. It is equally absurd to suggest that Sen. Kennedy and his fellow liberals want to abridge the civil liberties of law-abiding citizens. Yet such is the level of acrimony and emotionalism in the controversy over gun control that each side tends to attribute bad motives to the other.

If hot tempers can be cooled, which often seem doubtful, a couple of starting points might well be established. Certainly we can agree at the outset that there is a "gun problem." Presumably not even the most dedicated member of the National Rifle Association will deny it. The problem, briefly defined, is the criminal abuse of handguns.

That abuse is abundantly documented. Every hour of the day some person is murdered by a handgun. Roughly 11,000 persons die every year in this fashion; another 250,000 every year are wounded. An estimated 60 million handguns are now in circulation; another 2.5 million are added every year. For the criminal, getting a handgun is no problem at all. There are 170,000 licensed gun dealers; there is also a vast underworld commerce in handguns.

But agreement also should be sought on another starting point: However it may be circumscribed, there is in fact some constitutional right "to keep and bear arms." There is an inherent right of self-defense possessed by all law-abiding citizens in a free society. Gun collectors, storekeepers and gun dealers are not second-class citizens. In our eagerness to reduce the criminal use of handguns, we cannot justifiably abridge their lawful ownership.

Are those fair starting points? If so, how could federal legislation promote them?

Looking first at Sen. McClure's concern: The BATF, beyond question, has been guilty of gross abuses of bureaucratic power. Legitimate gun dealers have been harassed and persecuted. Private collectors have been turned into felons for technical violations or existing law. The paperwork burden of registration and reporting may well be need-

lessly complex and burdensome. To the extent that the McClure bill would correct these abuses, the bill deserves sympathetic consideration.

Sen. Kennedy's approach has merit also. If we ever are to get a handle on criminal abuse, we have to start somewhere. Mr. Kennedy would flatly ban the manufacture, sale, assembly or imposition of "Saturday night specials." He would define these weapons as handguns "not generally recognized as particularly suitable for or readily adaptable to sporting purposes," and he would leave a more precise description to be worked out in terms of weight, length, caliber and lack of safety features.

21-DAY WAITING PERIOD

Mr. Kennedy also would establish a 21-day waiting period for completing the sale of a handgun. He would prohibit pawnshops from dealing in such weapons. He would impose a mandatory additional sentence of two to 10 years on first conviction of using a handgun during commission of a felony. He has other proposal for recordkeeping and reporting that strike me as overly complex but that merit discussion anyhow.

The whole controversy over gun legislation has been flawed by too much name-calling. Mr. Kennedy and his colleagues are not bad guys, bent on confiscation. Mr. McClure and his colleagues are not bad guys, indifferent to crimes of violence. The bad guys are the murdering punks and loonies. Existing laws have not deterred them. We must seek laws that will.

TABLE I.—EFFECT ON McCLURE/VOLKMER/HATCH AMENDMENT ON HANDGUN CONTROLS

	Current law	McClure/Volkmer/Hatch amendment	Comments
1. Interstate sale of handguns.	Dealers are prohibited from selling any firearms over the counter to out-of-state residents; however, long guns may be sold to residents in contiguous States.	Dealers may sell firearms over the counter to out-of-state residents, as long as he does not have reason to believe the sale violates the law of the seller's state or the buyers State.	This change may make sense for rifles and shotguns, in order to accommodate sportsmen on out-of-state hunting trips; but it makes no sense for handguns. Dealers will find it difficult or impossible to apply the laws of other States. Criminals in D.C. will evade the District's tough handgun law by buying handguns in Virginia. The "reason to believe" standard makes it difficult to insure that sales between individuals will comply with applicable State laws.
2. Interstate mail order sales.	All interstate mail order sales of firearms are prohibited.	Mail order sales are permitted if the buyer and seller have previously met face-to-face and negotiated the sale.	This change opens the door to extensive evasion of the prohibition on mail order sale of handguns, particularly in cases where the buyer and seller have met at gun shows. There can be no verification of the face-to-face requirement.
3. Definition of dealer.	All persons "engaged in the business" of selling firearms are dealers and must be licensed.	(1) Defines a dealer as a "person who devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive sale of firearms." (2) Persons who make "occasional sales" are specifically excluded from the definition.	This change will open large loopholes in current law and undermine the ability of law enforcement officers to trace handguns used in crimes. It will exempt collectors who travel around the country selling handguns at gun shows. It may also exempt handgun sales by pawn shops or other businesses whose sales could be defined as "occasional." The handgun used by John Hinckley to attack President Reagan was traced in minutes to its sale by a Dallas pawnshop.

TABLE I.—EFFECT OF McCLURE/VOLKMER/HATCH AMENDMENT ON HANDGUN CONTROLS—Continued

	Current law	McClure/Volkmer/Hatch amendment	Comments
4. Importation of fully assembled snubbies.	Firearms may not be imported unless they are "particularly suitable . . . for sporting purposes" (the import ban does not apply to the importation of parts). In general, the ban applies to "snubbies" and "Saturday Night Specials"—revolvers whose barrels are less than 3 inches long, or pistols whose overall length is less than 6 inches.	Weakens the definition of snubbie by deleting the word "particularly."	The only purpose of this change is to permit more fully assembled snubbies to be imported. Two out of every 3 handguns used in murders, rapes, robberies, and muggings are snubbies.
5. Licenses for importation of firearms.	Unlicensed individuals may not import firearms.	Private citizens may import approved firearms without restriction. Licenses are required only for those whose "principal business" is importing.	This change will undermine the ability of law enforcement officers to trace imported handguns used in crimes. Individuals are unrestricted; and the watered down definition of "importer" will permit anyone to import significant numbers of handguns without obtaining a license.
6. "Private" sales by dealers.	Dealers must keep records of all firearms sales.	Sales by dealers from their personal collections of firearms are specifically exempted from the record-keeping requirement. Weapons must have been part of the collection for at least 1 year before the sale.	This change will enable unscrupulous handgun dealers to evade the record-keeping requirement by the simple device of shifting handguns from their business inventory to their "personal" collection. The 1-year requirement is likely to be unenforceable.
7. Ammunition	Dealers selling handgun ammunition are subject to the same licensing and record-keeping requirements as those selling firearms; these requirements do not apply to ammunition sold exclusively for rifles and shotguns.	Those dealing only in ammunition would be exempted from any requirements; firearms dealers would be exempted from record-keeping requirements for ammunition sales.	Since ammunition for rifles and shotguns is already exempt from these requirements, the only purpose is to weaken the law for handgun ammunition.
8. Private sa eslof handguns.	Interstate sales are prohibited; firearms may be sold only by licensed dealers, in order to insure that proper records are kept.	Private sales are permitted face-to-face, without going through a dealer. There will be no records of such transactions.	This change will encourage street sales of handguns and undermine the ability of law enforcement officers to trace weapons used in crime.
9. Inspection of licensees.	Records and inventory must be available for inspection at all reasonable times."	A warrantless inspection can be made only once a year, and only after reasonable notice." Other inspections require warrants based on "reasonable" cause. After a warrantless inspection, no criminal charge can be filed except for a sale to a prohibited person.	Effective law enforcement depends on unannounced inspections. Abuses in existing BATF practices can be ended without requiring notice for a inspections.
10. Intent requirement.	Not required for conviction	Proof of willfulness" is required.	This change will make it much more difficult to obtain convictions. Why should a prosecutor, have to prove that a felon charged under title VII with illegal possession of a handgun, knew he was violating the law?

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